

University of Texas Bulletin

No. 2525: July 1, 1925

COUNTY GOVERNMENT IN TEXAS

BY

HERMAN G. JAMES, J.D., Ph.D.

Director of the Bureau of Municipal
Research and Reference

REVISED BY

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University of Texas



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The benefits of education and of useful knowledge, generally diffused through a community, are essential to the preservation of a free government.

Sam Houston

Cultivated mind is the guardian genius of democracy. . . . It is the only dictator that freemen acknowledge and the only security that freemen desire.

Mirabeau B. Lamar

TABLE OF CONTENTS

Part I. Description.

Chapter	I.	Development of the County	9
Chapter	II.	General Nature and Functions of the County.....	13
Chapter	III.	The County Commissioners' Court	23
Chapter	IV.	The County Judge	37
Chapter	V.	Other Judicial Officers	43
Chapter	VI.	Finance Officials of the County ..	50
Chapter	VII.	County School Authorities.....	59
Chapter	VIII.	Minor County Officers.....	66
Chapter	IX.	Subdivisions of the County.....	71
Chapter	X.	State Control Over Counties	83

Part II. Criticism.

Appendix	I.	Provisions of the Texas Constitution affecting County Government	105
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PREFACE TO THE FIRST EDITION

The purpose of this bulletin is twofold. In the first place it is intended to give a brief, yet fairly complete description of county government in this State. County government, though an important part of the governmental system of the State, is but little known by the average citizen. It is even more important for the citizens of Texas than is city government, for while only about one-third of the inhabitants of this State live under city governments, every inhabitant, whether living in a city or not, is subject to a county government. Indeed, for two-thirds of the population of the State, county government is the only form of local government provided. That seems reason enough for undertaking to put in compact form a description of the main features of the county system as it exists in this State. This descriptive material is contained in part one of the bulletin.

The second purpose of the bulletin is perhaps even more important. Although owing to the general obscurity that exists with regard to county government, there is but little appreciation of its defects, largely inherent in the system which was copied from other states, it is unfortunately true that the plan of county government and its actual operation are very unsatisfactory. To point out these defects and suggest the means of remedying them seems, therefore, equally desirable. As counties are municipal corporations, that is, areas of local government, it is eminently fitting that such a study of county government as this should be undertaken by a bureau of municipal research and reference which is devoted to the work of improving the machinery and operation of local government. The critical examination and constructive proposals are contained in part two of the bulletin.

As will appear in the body of the text, a considerable portion of the legal provisions governing the system of county government in Texas are to be found in the Constitution.

Since any proposal for improvement may involve the necessity of constitutional amendment, it seems desirable to add in the form of an appendix the provisions in the Constitution of Texas that have a bearing on county government.

Finally, a bibliography on county government has been appended for the benefit of persons interested in making a more extended study of the subject. This bibliography, prepared by the Library of Congress, will enable persons interested in a further study of county government to find virtually all of the material on that subject in this country.

Inquiries on the subject of county government, and information as to errors contained in this bulletin will be cordially welcomed by the Bureau.

HERMAN G. JAMES.

PREFACE TO THE REVISED EDITION

While the number of changes in the laws relating to counties makes it advisable to revise thoroughly the first edition of this bulletin, it is to be regretted that these changes have not been of such a character as to improve materially the position of the county. As yet, newer tendencies in county government have found little foothold in Texas, and the criticisms of the system are almost as applicable at present as at the time when the bulletin first went to press. True, the fee system has been modified to such an extent that some of its bad effects are less pronounced now than earlier, and it is to be hoped that the abandonment of this relic of earlier days is not too far in the future; but in all other respects county government in Texas is still in the well defined rut of the past. Growth in population and in the number and importance of county functions has not been sufficiently rapid to break down the old system; there have been no unexpected strains on the county to cause the superstructure to give way; and it is extremely unlikely that changes of the immediate future will be any more comprehensive than have those of the past. Some day a constitutional convention may feel called upon to make a thorough revision of the present antiquated constitutional provisions now hampering the more progressive counties; until that time comes, in the absence of some unforeseen emergency, the present analysis of the status of the county and the criticisms contained herein probably will continue to be applicable.

A new edition of *County Government in Texas* finds the reasons advanced for the publication of the first edition as applicable today as then; and the fact that the original edition has long since been exhausted seems sufficient cause for the present publication.

IRVIN STEWART.

COUNTY GOVERNMENT IN TEXAS

PART I. DESCRIPTION

CHAPTER I

DEVELOPMENT OF THE COUNTY

The historical antecedents of the Texas county as a governmental subdivision are to be found in the municipalities or ayuntamientos of the Spanish and Mexican periods. These municipalities were large areas comprising one or more settlements or towns. Under Spanish rule and under the first years of the Mexican period, Texas was a province and completely under central control, governed practically by military rule. The population was very sparse and aside from the preservation of order and the collection of taxes there was virtually no governmental activity. When the territory which had revolted against Spain in 1810 and gained its independence in 1821 was created the United States of Mexico in 1824, Texas and Coahuila together were constituted a state, Texas being at first a single department with capital at Bexar or San Antonio. In 1827 there was proclaimed a constitution for the State of Texas and Coahuila, with a legislature popularly chosen by indirect election. The ayuntamientos or municipalities at that time existing were made electoral districts for the primary assemblies, the delegates chosen by them being the electors in the legislative districts to choose the deputies to the State Congress, and also the electors for the deputies to the Federal Congress of the Union. The ayuntamientos of each department, of which there were three, the Province of Texas being one, participated in the appointment of the chief of the department by the Governor of the State.

Under the Constitution of Coahuila and Texas, the ayuntamientos or municipalities, besides being electoral districts as noted above, were also areas for internal government and police. The governing organ, which was also called ayuntamiento, like the area, was composed of one or more alcaldes, one or more syndics, and a number of aldermen varying according to the population of the ayuntamiento. These officials were chosen annually by the same kind of municipal electoral assembly as those which chose the electors for deputies to congress. All towns with a population of 1,000 normally had their own ayuntamientos or governing bodies, and the capitals of districts were required to have them. Towns of lesser population could secure them by special decree, but normally such towns were united together in larger areas with a single governing body for all, the seat of the governing body being determined by the governor. For remote settlements within the ayuntamiento, a local commissary of police and a syndic were appointed by the electoral assembly of the district to which the settlement belonged. The towns were charged with the provision of primary education and were also made militia districts.

Under the laws of Coahuila and Texas, there were added to the fourteen municipalities in the Department of Texas, all of them comprising large areas, four new municipalities. The provisional government of 1835 added five more, so that at the time of the framing of the Constitution of 1836 there were twenty-three of these municipalities in all in Texas. The Constitution of 1836 called these municipalities *precincts* and made them districts for the election of representatives to the congress of the republic. It also contained various provisions with regard to counties, such as requiring a county court for each county, providing for the election of sheriffs, coroners, justices of the peace, and constables in each county, and providing for the creation of counties on petition of the inhabitants, not less than nine hundred square miles in area. Although the Constitution did not expressly designate the existing municipalities as counties,

that was evidently the clear intent, for the areas of these municipalities designated by name in the Constitution as precincts, were in all subsequent legislation referred to as counties.

The early legislation of the Congress of the republic referring to counties carried out the provisions of the Constitution by providing for county courts, consisting of an elected county judge, two associate justices chosen by the justices of the peace, and a clerk who was also made county recorder. A law also provided for the election of sheriff, coroner, constable, and justices of the peace. The counties were made militia districts, and boards of commissioners were provided for roads, highways, ferries, and bridges, and the care of the poor in each county. It is interesting to note that in the very earliest legislation affecting the county, the county judge was included in this board of commissioners and so made an important administrative as well as judicial officer. It may also be noted that the first congress incorporated some eighteen towns and cities, providing machinery of local government consisting of mayor, aldermen, and other officers, and giving them in addition to the usual corporate powers, the functions of preserving the peace, removing nuisances, repairing streets, establishing schools, and providing for fire protection. For these purposes the incorporated towns and cities were given ordinance and taxing powers. Beginning in 1837 also, there were created a number of new counties, until at the time of framing the Constitution of the State of Texas after annexation to the United States there were thirty-six counties in all. Thereafter new counties were created as the territory of the State became settled; and the provisions for the government of the counties were gradually made more definite and extensive, the Legislature having virtually unrestricted power over counties. In 1839 three leagues of land were set apart in and for each county establishing a primary school or academy, the origin of the county school fund.

The Constitution of 1845 contained practically nothing new with regard to counties, but the subsequent constitutions incorporated an increasing number of provisions with regard to the creation, organization, and powers of county governments, until at the present time a good part of the law with regard to counties in this State is to be found in the Constitution.¹

¹See Appendix I for constitutional provisions regarding counties.

CHAPTER II

GENERAL NATURE AND FUNCTIONS OF THE COUNTY

The Texas county is an administrative subdivision of the State for the purpose of performing both State and local functions. There are at present 254 counties in the State, of which three are unorganized; that is, have no functions or officers of their own, but are attached for judicial and land surveying purposes to the most convenient organized county or counties.¹

The Legislature has the power of creating counties under the following constitutional restrictions. In the territory not included in organized counties no new counties may be created with an area less than 900 square miles. The new counties created must be square in form unless prevented by preëxisting boundary lines. In border counties—two of the three unorganized counties being border counties—the area may be less than 900 square miles if the State lines should make that necessary. (Const. 1876; art. 9, sec. 1.)

Within the territory of any organized county or counties, no new county may be created with an area less than 700 square miles and no existing county shall be reduced to an area less than that. No new county may be created so as to approach within less than twelve miles of the county seat of any county from which it may in whole or in part be taken. (Const. 1876; art. 9, sec. 1.)

In order to create counties of an area less than 900 square miles, or to reduce the area of any existing county, a two-thirds vote of each house of the Legislature is required. But in no case may a county of less than 700 square miles be created, nor an existing county reduced below that area. (Const. 1876; art 9, sec. 1.)

¹The three unorganized counties, with their population, in 1920 were: Cochran, 67; Crane, 37; Loving, 82.

Whenever any part of a county is stricken off and attached to or created into another county, it becomes liable to pay its proportionate share of all the then existing liabilities of the county from which it was taken, the manner of enforcing this provision being regulated by law.² (Const. 1876; art. 9, sec. 1.)

No part of any existing county may be detached from it and attached to another existing county until the proposition for such change shall have been submitted to a vote of the electors of both counties, and shall have been favored by a majority of those voting on the question in each. The manner of submitting such proposition is regulated by law. (Const. 1876; art. 9, sec. 1.)

Whenever any new county is to be created out of the territory of an existing county, it is the duty of the commissioners' court of the existing county from which the greater part of the new county has been taken, at least one month before the next general election of county officers, to divide the new county into commissioners', justices', and constables' precincts, and to designate polling places. In the same way, it is the duty of the county judge, or if his office be vacant, of any two of the county commissioners, to order an election for all county officers, to be held on the general election day and to appoint presiding officers for the polling places. (Arts. 1356-1358.) It has been held, however, that the county election need not be delayed until the general election.

In order to create an organized county out of an unorganized county attached to an organized county a petition signed by not less than seventy-five qualified voters in the unorganized county is required, which petition shall be presented to the commissioners' court of the county to which the unorganized county is attached. The commissioners' court shall then proceed to organize the county in

²Arts. 1339-1347. References are to Vernon's Sayles' Revised Civil Statutes, 1914, and to the 1918 and 1922 Supplements to that work.

the manner indicated above. If the unorganized county is not attached to another county, the county judge of the nearest organized county orders the election and appoints the officers of election. (Art. 1361, amended 1918.)

The county judge of the county conducting the organization of another county issues the certificate of election, approves the bonds of officers, and administers the oath of office. All books, records, maps, and other property belonging to a newly organized county are to be delivered to the proper officers of the new county within five days after the legal qualification of such officers. (Arts. 1362, 1363.)

The county, as has been said, is a unit both for purposes of State administration and for performing local functions. Concerning the distinction between these two classes of functions, a distinction by no means easy to draw with accuracy, more will be said later on. But chief among characteristics of the county as a local government unit is its character as a public corporation. As such the county can acquire, hold, and sell real estate and personalty, and can sue and be sued in contract. But no suit may be brought against a county unless the claim shall have first been presented to the county commissioners' court for allowance and such court shall have neglected or refused to audit and allow the same or any part thereof. Nor can any execution issue on any judgment against a county, the legal obligation being imposed upon the commissioners' court to settle and pay such judgment. For the purpose of conveying real estate the commissioners' court acts through a duly authorized commissioner, who must sell the realty at public auction. For the purpose of making contracts for the erection or repair of county buildings or for any other purposes authorized by law, the county commissioners' court may appoint an agent or agents. (Title 28, chap. 3.)

In every organized county there is a county seat. This is originally located by a majority vote of all electors in the county voting on that question at the election held by the county judge for the first election of county officers. But the county seat must be located within five miles of the

geographical center of the county, unless two-thirds of the electors voting on the subject shall vote for a location which is more than five miles from the geographical center. The geographical center of any county is to be determined by the commissioner of the general land office of the State and certified to the county judge to be entered upon the records of deeds of his county. (Arts. 1387, 1388, 1391.)

When a county seat has been located it may not be removed from within five miles of the geographical center of the county except by a vote of two-thirds of all electors voting on the subject. But a majority vote is sufficient to remove a county seat from a point more than five miles from the geographical center to a place within the five miles. (Const. 1876; art 1, sec. 2.)

Moreover, the removal of a county seat from one point within the five miles to another point within the five miles, or from one point without the five miles to another point without the five miles requires a two-thirds vote. An election for the removal of a county seat must be called by the county judge, or in case of his failure or inability to act by two of the county commissioners upon written application of not less than one hundred freeholders and qualified voters resident in the county. Where the county seat has been established more than ten years, 200 signatures are required, unless there are less than three hundred and fifty legal voters in the county, in which case 100 signatures are sufficient; and where a county seat has been established for a longer term than forty years, a majority of the resident freeholders and qualified voters shall be required to make the application. In any case where there are not more than one hundred and fifty qualified voters, resident in the county, a majority of these may file the necessary application regardless of the length of time the county seat has been located. At the election all persons who are qualified electors under the Constitution and laws are entitled to vote. After such an election has been held, no application for removal may be made again within five years. (Arts. 1389, 1390 [amended 1919], 1392, 1395.)

At the county seat all terms of the district, county, and county commissioners' courts are to be held, and the courthouse and jail are to be located there, as well as the offices for county officers. (Arts. 1396, 1397, 1399.)

The boundaries of counties, when not sufficiently definite and well defined, are to be marked by competent surveyors appointed by the county judges of the counties affected. In case of disagreement between the surveyors, the matter is settled by the commissioner of the general land office. Suits to establish a disputed boundary line between counties may also be brought in a district court of the nearest county not affected by the dispute. (Title 28, Ch. 4.)

The area of Texas counties varies from 149 square miles in Rockwall County, to 5,935 square miles in Brewster County.³ Most of the counties in East Texas are irregular in shape, while most of them in West Texas are rectangular in shape, the typical county in Northwest Texas being a square with thirty miles on a side.

The population of Texas counties⁴ varies from 37 in Crane County to 210,551 in Dallas County. The smallest population in an organized county is 137 in Hockley County, and altogether there are three unorganized counties and sixteen organized counties with a population less than a thousand. There are five counties with a population exceeding 100,000. In the decade from 1910 to 1920 eighty-one counties showed an absolute decrease in population, while the number of counties in which the rural population—that is, persons living in places of less than 2,500 inhabitants—decreased was 100. The density of population in Texas counties varies from 0.1 per square mile in Loving and Cochran counties to 245.2 in Dallas County. The density of population is much greater in East Texas, while the per cent rate of increase in population from 1910 to 1920 was greater in West Texas.

³Census of 1920. There have been various divisions and new counties since then.

⁴Taken from the United States census of 1920.

In order to get a conception of the variety of governmental functions for which the Texas county is the unit, an enumeration of the more important matters will here be made; the manner of their exercise and the agencies for their execution being more minutely considered in the subsequent divisions. In the first place, the county is an important election district. Not only is there a large number of local officers elected in the county, but the county is made by law the unit for the electoral procedure for district, state, and national elections. The division of the county into election precincts, the appointment of judges of elections, the payment of judges and clerks, as well as the provision of election paraphernalia, are all functions imposed upon the county for all general elections, while the county authorities are the returning officers. The collection of the poll tax as a prerequisite for voting is also imposed upon the county. Single counties or combinations of entire counties are election districts for representatives and senators in the State Legislature, for district judges, clerks, and attorneys, for judges of the courts of civil appeals, and for United States representatives.

In the second place, the county is the basic judicial division of the State, there being in each county a court of record with original jurisdiction over misdemeanors when the fine to be imposed exceeds \$200.00 or when exclusive jurisdiction has not been conferred on the justices' courts, and with original jurisdiction over civil cases, except for the recovery of land, in which the matter in controversy exceeds \$200.00 but not \$1,000.00. These county courts have also appellate criminal and civil jurisdiction in cases in which justices' courts have original jurisdiction, with the exception of civil cases when the judgment of the justice courts does not exceed \$20. In addition, the county court has the general jurisdiction of a probate court. The civil and criminal jurisdiction of county courts may be changed by the Legislature by local or general law. (Const., Art. V, Sec. 22); and by such general law the county court has been made a juvenile court (Art. 2185). The justice

courts consist of one justice of the peace elected in each of the divisions of the county called justice precincts of which each county has from four to eight, there being two justices in any precinct in which there is a city of 8,000 or more inhabitants. The original precincts were laid out by the county court, thereafter by the county commissioners' courts. For each justice court one constable is elected. As judicial officers of the county there are in addition to the county judge, a clerk of the county court, known also as the county clerk, a county attorney (in counties in which there is not a resident criminal district attorney), and a sheriff, all elected for two years by the qualified voters of the county. All counties constitute a part or the whole of civil judicial districts, and for that purpose there are elected district clerks in all counties having more than 8,000 population. In counties having less than 8,000 population only one clerk is elected, who performs the duties of district and county clerk. Many counties constitute in themselves more than one civil judicial district, and in that case the county voters elect not only district clerks but district judges as well. In certain cases, the county constitutes also a criminal district and elects a judge of the criminal district court; the county sheriff, attorney and clerk of the civil district court acting also for the criminal court. In most instances several counties constitute a criminal district, in which case the district attorney acts as county attorney of the county in which he is resident.

Police functions in the county are entrusted to the elected sheriff, who acts both as executive arm for the courts and as conservator of the peace. He is also keeper of the county jail and in charge of the county courthouse. Under the head of police power comes also the safeguarding of the public health, which is entrusted to a county health officer, who acts as agent both of the State Board of Health and of the commissioners' court.

The county is also a financial unit for State finance administration as well as for local finances. So, for instance, the county assessor acts for the State in rendering the value

of all property in the county subject to the general property and other State taxes, the county judge administers the inheritance tax, and the county tax collector and county treasurer receive tax moneys on behalf of the State, besides administering the county finances.

The county serves as the unit for surveying land, through elective county surveyors, and for recording titles, through the county clerk. Poor relief is another function imposed upon the county by the State, both in the shape of providing immediate relief and of providing poorhouses and farms, as well as taking care of such resident indigent lunatics and idiots as cannot be admitted into the lunatic asylum. Finally, the county, acting through the county assessor, is the district for enrolling all persons, other than members of the active militia, liable to military duty and enrollment in the reserve militia of the State.

The county is furthermore an important area for public school administration. In every county having as many as 3,000 children of scholastic age, a county superintendent of public instruction is elected, and such officer may be elected in counties having a smaller scholastic population upon petition and vote of the qualified voters of the county. The county superintendent of public instruction has authority over all the public schools in his county except in the independent school districts having a scholastic population of 500 or more. The salary of the superintendent is paid out of the county funds, though he is under the direction of the State Superintendent of Public Instruction. In counties having no superintendent of public instruction, the county judge is *ex officio* superintendent. Every county is subdivided by the commissioners' court into convenient school districts with a normal area of not less than nine square miles; and in each of these three trustees shall be elected by the qualified voters of the district. Furthermore independent corporate school districts may be formed by the incorporation of any town or village for free school purposes and may exercise exclusive control of the public

free schools within their limits. Counties may also establish public libraries and experimental and demonstration farms. By recent legislation counties are also empowered to establish free county high schools, under the control of a county board of education of seven members elected by the voters. Another function of the county includes public health administration, through a county health officer; counties may establish county hospitals. The Thirty-fifth Legislature authorized counties to provide pensions for widowed mothers.

All of the functions of the county so far enumerated dealing with such matters as militia, elections, judicial and police activities, public health, assessment and collection of taxes, land surveying, recording of titles, poor relief, public health, and public education, are either wholly or partly State functions. In addition to these the county has some important functions which are more strictly local. The most important of these relate to the provision of roads, bridges, ferries, and drains. Even in these regards the powers of the county are by no means entirely discretionary, for the law imposes the duty upon the county authorities to lay out certain main roads, and prescribes the manner in which other roads must be opened, closed, or altered, upon petition of property owners. The county commissioners are supervisors of the roads within their precincts, and the county is divided into convenient road precincts with an overseer for each appointed by the commissioners' court. Furthermore, the commissioners' court may appoint from one to four road commissioners, or road superintendents, in counties having less than 40,000 inhabitants. In counties having more than 40,000 inhabitants the county commissioners are ex officio road commissioners in their precincts. In addition to the construction, repair, and drainage of public roads, the county is empowered to build bridges. It may also construct drains under conditions specified in the general laws. Finally, the county may license the operation of ferries over water courses, lakes or bays within the county.

Other public works in the counties, such as county buildings, jails, poor farms, libraries, hospitals, demonstration farms, etc., have already been mentioned in connection with other functions of the county. Counties may also provide public parks. For all the above mentioned purposes the county is given the power of taxation under conditions which will be considered later.

Generally speaking, it may be said that the county has no legislative body and no legislative jurisdiction. But it has been seen that in many cases action on the part of them county with regard to the various undertakings considered in this chapter is dependent on a majority vote of the qualified voters of the county, as, for instance, in the case of the organization of counties, the location or removal of county seats, the provision for a county superintendent of public instruction in small counties, the establishment of county high schools, the voting of an additional road tax as permitted by the constitution, etc. Furthermore, a majority vote of the qualified taxpayers of the county is required, as will be seen, for the issuance of county bonds. All of these matters subject to a majority vote of the county electors are, however, more of an administrative than a legislative nature. The only real legislative function of county authorities is that entrusted to the commissioners' court of levying taxes for general county purposes, and for roads and bridges, and other public works.

CHAPTER III

THE COUNTY COMMISSIONERS' COURT¹

The county commissioners' court is the general governmental authority of the county. Although called a court and having some of the attributes of a court, it is in reality primarily an administrative, not a judicial body, corresponding in that regard to the authority which in most states is called the county board.

Composition.—The commissioners' court consists of the county judge² as presiding officer and four commissioners. One of the commissioners is elected for a term of two years by the qualified voters in each of the four precincts into which the county is divided. Qualifications for voting in elections for county commissioners are determined by general law and are the same for other local, as well as State and National, officers.³ The right to exercise the suffrage is dependent on the payment of an annual poll tax of \$1.50 for the State, with an additional 25 cents for the county, imposed upon all persons between 21 and 60 years, resident in the State on January 1 preceding the levy, *except* Indians not taxed, persons insane, blind, deaf and dumb, or those who have lost a hand or a foot, or are permanently disabled. Const., Art. VI, Sec. 2; Statutes, Title 40, Chap. 4.)

Vacancies in the office of county commissioner are filled by the county judge until the next general election, there being no special qualifications specified for the election or appointment to the office of county commissioner except

¹Title 40 as amended.

²For the other duties of the county judge, see p. 38.

³Every adult citizen of the United States, who has resided in the State one year and in the district or county six months next preceding the election, *except* idiots and lunatics, paupers supported by the county, persons convicted of felony unless restored to full citizenship and right of suffrage, or pardoned, and soldiers, marines, and seamen employed in the service of the army or navy of the United States. Const., Art. VI, Secs. 1, 2.

residence in the precinct. The commissioners must take the constitutional oath of office,¹ and also an oath not to be directly or indirectly interested in any contract with or claim against the county in which they are resident, except as regards fees of office. They must also execute a bond in the sum of \$3,000, conditioned on the faithful performance of their duties.

The commissioners may be removed from office by the judge of the district court for incompetency, official misconduct, habitual drunkenness, or other causes defined by law. Likewise conviction for a felony or any misdemeanor involving official misconduct effects an immediate removal.

Meetings and salary.—The regular terms of meetings of the commissioners' court fall on the second Monday of each month, and may continue for one week. However, a single meeting in each quarter is sufficient if the business of the court does not demand more frequent sessions. Special terms may be called by the county judge or any three of the commissioners and continue in session until the business is completed. Meetings are held at the county court house. Any three members of the court, including the county judge, constitute a quorum for the transaction of any business, except that of levying a county tax, which may be levied only at a regular term of the court and when all the members of the court are present. The clerk of the county court is ex officio clerk of the commissioners' court. His duties as such are to attend the meetings of the court and keep its minutes, to issue all notices, writs and processes, necessary for the proper execution of the powers and duties of the court, and to preserve and keep in his possession all books, papers, records, and effects belonging thereto. The court has an official seal to be used in the authentication of all official acts of the court or its officers in all cases where a seal may be necessary, such as notices, citations, writs, and processes. The court may subpoena

¹Const., Art. XVI, Sec. 1.

witnesses and punish contempt by fine of not more than \$25.00, or by imprisonment not to exceed twenty-four hours.

In counties having an assessed valuation of less than \$10,000,000.00 the county commissioners receive from the county treasury the sum of \$5.00 per day for each day served as commissioner. When acting in their capacity as road supervisors for their respective precincts, the commissioners receive an additional compensation of \$5.00 per day for each day spent in the discharge of their duties; provided, that no commissioner may receive more than \$1,000.00 in any one year. In 1923 the legislature classified counties according to assessed valuation for purposes of compensation of the commissioners and fixed salaries ranging from \$1,200.00 in counties having an assessed valuation of \$10,000,000.00 to \$3,600.00 in those having a valuation of more than \$100,000,000.00—the salary to be in lieu of all other fees and per diem. (Art. 6901a-6901e.) The legislature has varied from the classification upon occasion and has fixed salaries upon some other basis.⁵ The office of county commissioner is one of the few which under the constitution does not disqualify the incumbent from holding at the same time another lucrative public office. (Const., Art. XVI, Sec. 40.)

Powers and duties.—The powers and duties of the commissioners' courts cover a wide range of functions, only part of which are enumerated in the chapter in the Revised Statutes dealing with the powers and duties of commissioners' courts. Although many of these varied powers defy exact classification, the following grouping seems most convenient:

1. *Appointments.*—The power of appointment vested in the commissioners' court does not extend to the more important county officers; in fact, more county officers charged with administration are independently elected than are corresponding officers in State or city government. The

⁵See, for instance, Acts Reg. Ses., 1923, Chap. 178; Called Ses., 1923, Chap. 36.

minor offices filled by the commissioners' court constitute a rather extensive list, embracing the offices of commissioners of appraisal of improvement districts, health officer, veterinarian, director of the experiment farm, drainage commissioners (in districts which have not, by vote, determined upon the election of such officers), drainage engineer, juries of view to lay out county roads, navigation and canal commissioners, road overseers, road patrolmen, county road superintendent (where there is a county engineer he serves as much superintendent), inspectors of sheep, tax assessors and tax collectors for drainage districts (where authorized by an election held for that purpose), traffic officers, and juries of view in drainage districts.

Vacancies in the more important county offices are filled by a majority vote of the commissioners' court. These include county judge, county attorney, clerk of the county court, sheriff, county treasurer, county hide inspector, assessor of taxes, collector of taxes, justices of the peace, and constables. Appointees fill out the unexpired term; *i.e.*, serve until the next general election for county officers.

A power closely connected with the power of appointment, though not to be confused with it, exists in the right of the court to authorize the appointment, and within limits fixed by the statutes, the salaries, of deputies for the district attorney and clerk of the district court as well as for each of the officers named in the preceding paragraph except the treasurer, the surveyor, and the hide inspector. (Art. 3902, 1922 Sup.)

2. Contracts.—Generally speaking, the power of commissioners' courts to make contracts is coëxtensive with the powers of the court. An agent may be appointed to make any contract on behalf of the county for any purpose authorized by law. Specific provision is made for the awarding of contracts for all stationery furnished to county officials. Bidders on stationery contracts must make an affidavit to the effect that they are not members of any pool or combination of any kind, and that they have not been

for the past six months concerned in any combination to control the price of supplies bid on.

Whenever a contract calls for the expenditure of \$2,000.00 or more of the funds of the county, notice must be given in a prescribed manner and competitive bids called for, the contract being awarded to the lowest and best bidder. (Acts, Reg. Ses., 1923, Chap. 127.) Further provision is made that contracts calling for an expenditure of between \$500.00 and \$2,000.00 must be let by competitive bids at a regular term of the court; but there is no requirement that contracts for larger amounts be awarded at regular terms. The requirement of competitive bids is not binding in cases of public calamity where an immediate expenditure is necessary to relieve the necessity of citizens or to preserve the property of the county. All contracts let by the commissioners' court without compliance with the above provisions are declared void. Additional provision was made by the legislature in 1921 to the effect that supplies of every kind, road and bridge material, or any other material, for the use of the county must be purchased on competitive bids, the contract to be awarded to the lowest and best bidder. An exception was made in the case of emergency purchases involving less than \$150.00. (Art. 1480, 1922 Sup.)

3. Roads, bridges, ferries, and drains.—The commissioners' court has full power to order the laying out and opening of public roads when necessary, and, subject to certain conditions, to discontinue or alter any road when deemed expedient. Each commissioner serves as supervisor of public roads in his precinct and reports on the condition of the roads to each regular term of the commissioners' court. Overseers are appointed for each precinct and the hands apportioned among them by the court. Not more than four road commissioners may be appointed by the commissioners' court, each road commissioner controlling such district as may be allotted to him by the court and controlling all overseers, hands, equipment, etc., within

his district; or a county commissioner may act as road commissioner for his precinct.

Each county may have one or more road superintendents, designated by the commissioners' court, to have supervision over the roads and highways of the county. General control of road funds, the letting of contracts for labor and machinery, and other incidents to the construction and repair of roads, are all vested in the commissioners' court of each county. A general road law passed in 1921, but specifically excepting from its operation 247 counties, provides for the patrol system of road repairs, to be carried out under the direction of a county road superintendent appointed by the commissioners' court.

It is the duty of the commissioners' court to obtain all available information and advice from the State Highway Commission before constructing any road in the county; and the Highway Commission is obliged to consider and advise concerning general plans for the road system of the county. Further, the commissioners' court must furnish the Highway Commission with a road map of the county, showing the location of all roads and their relation to connecting roads in other counties, and must indicate which would best form a part of a system of State highways. When the commissioners' court authorizes the construction of a section of what has been designated as a State highway, it may secure State aid to the amount of one-fourth of total cost, not to exceed the cost of ten average miles, upon compliance with the specifications of the State Highway Engineer.

Full power and authority to build and keep in repair all necessary bridges is vested in the commissioners' court. Whenever the court deems it to the best interests of the county to build a bridge within the corporate limits of a city located within the county, the commissioners' court must submit the proposition to the property taxpaying voters of the county and secure their approval.

The right to establish ferries, secured to commissioners' courts by the statutes, includes the right to construct and

operate as well as to regulate the rates and service of private ferries licensed by the court.

In addition to the powers of the commissioners' court with regard to roads, bridges, and ferries, the court is authorized to construct drains in the county and to establish drainage districts, to regulate methods of irrigation and create water improvement districts for the construction of levees and other improvements to prevent overflows. In counties bordering on the Gulf of Mexico the commissioners' court is authorized to construct seawalls and breakwaters.

4. Public buildings.—Courthouses, jails, and other necessary public buildings are to be erected and kept in repair by the commissioners' court. When necessary, the court may provide other buildings or rooms at the county seat for the holding of the sessions of the county court. Under the terms of an act passed in 1919, provision must be made for suitable quarters in the courthouse for the holding of justice of peace courts in any precinct containing more than 75,000 inhabitants. Likewise, it is incumbent upon the commissioners' court to maintain a suitable restroom for women in or near the courthouse; and the court is to cooperate with business and professional organizations in paying the salary of the matron for the restroom within certain maximums which vary with the population of the county.

5. Health and charities.—In addition to the appointment of the county health officer⁶ the commissioners' court is given the power to establish a county hospital and appoint a board of managers therefor. In counties having no city with a population of more than 10,000 the court may contract with a private hospital for the admission of the sick of the county; and counties having within their limits cities with a population of more than 10,000 are authorized to cooperate with such city in the building of a city-county hospital. In conjunction with the county hospital, a school for the education and care of children suffering with tuber-

⁶For duties of county health officer see p. 67.

culosis may be established by the board of managers of the hospital. Whenever there is within the county an unincorporated town or village, the commissioners' court may designate the lines of such community and appoint a board of health of three members (at least two of whom must be practicing physicians) for such town; and this board of health has the power to compel any citizen to clean his premises if they are in an unclean or unhealthy condition. The commissioners' court, furthermore, may coöperate with the municipal authorities of incorporated cities and towns in making sanitary improvements therein. The court is authorized to contribute to the local expenses of the public health display of the State Department of Health. The county health officer may be directed to declare and maintain a quarantine whenever the commissioners' court has reason to believe that there is danger of the introduction or dissemination of a dangerous disease that can be guarded against by quarantine.

The commissioners' court considers applications for and grants mothers' pensions. A widow who has resided in the State for five years and in the county for two years, and who has a child or children under 16 years of age whom she is unable to support, may petition the commissioners' court for assistance. If the court acts favorably upon the application, the mother is granted a monthly pension of not over \$12.00 for one child, \$18.00 for two, and \$4.00 for each additional child. The granting of the pension is not compulsory, and the action of the commissioners' court, whether the petition is granted or denied, is final and not subject to review by any court. (Arts. 6285 $\frac{1}{4}$ -6285 $\frac{1}{4}$ g.)

The commissioners' court is also charged with the support of paupers, and such idiots and lunatics as cannot be admitted into the lunatic asylum, who are unable to support themselves. Indigents who are sick must be admitted to the county hospital; and at their death the county must provide for their burial.

6. **Libraries.**—On their own initiative, or on petition of a majority of the voters of a county, the commissioners' court may establish and maintain a free county library to serve those portions of the county outside of the limits of a city maintaining a free public library service. Where the commissioners' courts deem it advisable, two or more adjacent counties may establish joint libraries. The court may avail itself by contract of the services of an already existing library, and may permit an incorporated city to make use of the facilities of the free county library upon mutually satisfactory terms. Branch libraries are to be established in the various parts of the county in order to make the books accessible to all residents of the county; and separate branches must be provided for negroes. For the support of the free county libraries the commissioners' court is empowered to set aside a sum of money not to exceed 5 per cent of the total assessed valuation of the property of the county. (Title 29C.)

Upon receipt of a petition signed by 100 qualified voters of the county, the commissioners' court must call an election on the question of establishing a farmers' county library. If the proposition carries, it is the duty of the court to employ a librarian, provide rooms at the courthouse, and arrange for the assembling and cataloguing of information on agriculture, horticulture, and kindred subjects. (Arts. 14xx-14z.)

7. **Parks.**—Not more than four parks, with an area of not over one hundred acres each, may be established by the commissioners' court of any county. The court has full control over the parks, including the power to make improvements and to regulate the conduct of any business within the park limits. For such purpose a levy of not more than 5 cents on the \$100 valuation of the county may be made for the purchase and improvement of lands for use as county parks. Since there is no similar provision in the Constitution granting such taxing power, the validity of the grant may be questioned. (Title 29B.)

8. Elections.—The commissioners' court is charged with a variety of functions in connection with the conduct of general elections. It divides the county into convenient election precincts, appoints the judges of elections, and orders the payment of election judges and clerks out of the county treasury, acts as a canvassing body, and is authorized to act through two or more commissioners in performing any of the large number of duties imposed upon the county judge in connection with elections, whenever that office is vacant or the officer from any cause fails to perform his duty. Under the same conditions, the commissioners may act in place of the county judge in the organization of counties, in the removal of a county seat, and in other like instances. The commissioners' court is charged with the conduct of elections for the creation of drainage, improvement, navigation, and other special districts. It also orders elections to determine whether cattle shall be permitted to run at large, and whether the county shall have a hide and animal inspector. In certain cases, it may order elections for the filling of vacancies in municipal offices, the filling of which is not otherwise provided for.

9. Finances.—Probably the most important of the functions of the commissioners' courts are those connected with finances. These may be considered under three heads, the raising of revenues, the borrowing of money, and the control of funds, including their disbursement. This class of functions relates almost wholly to county as distinguished from State concerns, though in certain regards the commissioners' court acts as an agent for State tax administration also.

In the first place, the commissioners' court has power to levy and collect a general property ad valorem tax, not to exceed 95 cents on the \$100 valuation in all, distributed as follows: Not to exceed 25 cents for general county purposes; not to exceed 15 cents for the jury fund; not to exceed 15 cents for roads and bridges; not to exceed 25 cents for public buildings, streets, sewers, waterworks and other permanent improvements; and an additional tax not to exceed 15 cents for road purposes, provided this receives the

approval of a majority vote of the property taxpaying voters. Taxes to meet indebtedness incurred prior to 1883 are not included within these limits. (Art. 2242.) The taxes listed above are provided for in the Constitution; in addition thereto the Legislature has attempted to authorize a levy of not more than 5 cents on the \$100.00 for county parks, when such levy has been approved by a two-thirds vote of the taxpaying voters in the county. Coast counties may levy additional taxes not to exceed 50 cents on the \$100.00 valuation for the payment of indebtedness incurred, upon approval of a majority vote of the taxpaying voters in the county, for the erection and maintenance of seawalls and breakwaters, or for sanitary purposes. (Title 83, ch. 3.)

In addition to levying an *ad valorem* tax for the above named purposes, the commissioners' court may levy a 25-cent poll tax for county purposes (Art. 7354); one-half of all occupation taxes levied by the State, unless specially prohibited (Art. 7357); and a tax on the sale of non-intoxicating malt liquors equal to one-half of the State tax (Art. 7476).

No county tax may be levied except at a regular term of the commissioners' court, all members of the court being present.

The commissioners' court calculates the rate of taxes to be levied for general purposes in the county. It also acts as a board of equalization to receive all the assessment lists and books of the county tax assessors for inspection, correction or equalization and approval. It furthermore sits as a board of inquiry in cases where land has been erroneously rendered for taxes or has been improperly sold for taxes, and in other special cases.

It is authorized to issue bonds for the erection of a county courthouse and jail not exceeding 2 per cent of the taxable values, and for the construction of bridges not exceeding $1\frac{1}{2}$ per cent, and for the purchase of suitable sites within the county, and the erection thereon of buildings for use as schools or homes for dependent and delinquent boys and girls, and for the improvement and maintenance of public

roads, provided the proposal is approved by a majority of the property taxpaying voters in the county under regulations provided by law. But the court may issue bonds for the funding of valid outstanding bonds, and for sums less than \$2,000.00 for repairing buildings for which bonds are authorized, without the necessity of such approval by the property taxpaying voters. Bonds may also be issued for the erection and maintenance of county hospitals. Furthermore, the commissioners' court authorizes the issuance of bonds in drainage, water improvement, water control and preservation, navigation, levee, and road districts which may consist of the county, of less than the county, or of parts of several counties, upon two-thirds vote of the property taxpaying voters, up to an amount equal to one-fourth the assessed valuation of the real property of the district. In the gulf counties, moreover, the commissioners' court may issue bonds for the construction and maintenance of seawalls and breakwaters (and for sanitary purposes) upon vote of two-thirds of the property taxpaying voters in the county, the amount being limited by the requirements regarding taxation for sinking fund and interest, which must not exceed 50 cents on the \$100.00 assessed valuation of property in the county.

All claims against the county are audited, adjusted, and settled by the commissioners' court, which orders their payment.

Finally, the commissioners' court is charged with a considerable number of duties in the administration of and supervision over public moneys. It is ordered to procure a well-bound ledger and index and to cause to be entered therein a full, complete and orderly statement of the condition of the finances of the county. This ledger is to be kept by the county clerk, who makes a sworn quarterly statement to the commissioners' court, upon whose orders the fees due the clerk are paid out of the general fund. All judicial officers in the county, as well as the county treasurer, must make a sworn quarterly statement to the commissioners'

court concerning all fines imposed and collected and judgments rendered and collected. All transactions by the county treasurer with regard to county funds must be reported to the commissioners' court and approved by it. The county auditor and the county tax assessor must also report to the commissioners' court.

The commissioners' court receives bids for county depositories, makes the award, approves their bond, and receives a quarterly statement from same.

10. Miscellaneous.—Among the other powers of the court may be mentioned that of approving the official bonds of the county attorney, auditor, clerk, school superintendent, surveyor, treasurer, inspector of hides and animals, inspector of sheep, public weighers, sheriff, constables, assessor, and collector. In all these cases the commissioners' court has the power and the duty to require new bonds or additional sureties whenever they consider the bonds for any reason to be insufficient.

For the improvement of agricultural conditions in the county, the commissioners' court is authorized to establish and maintain an experimental farm, upon petition of 10 per cent and a majority vote of the qualified voters of the county, the expenses to be borne out of the general fund of the county. The commissioners' court may also appropriate not over \$2,500.00 for farm demonstration work in the county.

It is the province of the commissioners' court to lay off their respective counties into precincts, not less than four nor more than eight, for the election of justices of the peace and constables, and fix the times and places of holding the various justices' courts in their counties, and to establish places in such precincts where elections shall be held.

Among the other miscellaneous duties of the commissioners' court may be mentioned the power to limit the price of lots owned by cemetery corporations outside of cities, to fix the terms for the county courts, to provide seals for the county and district courts, to condemn railroad property for street purposes in unincorporated places, to stock public

waters with fish, to establish and control workhouses and county farms, to pay bounties for killing of certain animals, to license persons to make and sell standard weights and measures, and to appropriate up to \$100.00 a month for the expenses of the active militia in their county. Finally, the commissioners' court receives reports from certain persons, such as butchers, as well as from financial officers of the county whose connection with the commissioners' court has been considered under the head of finances.

CHAPTER IV

THE COUNTY JUDGE

The most important single officer in the county is the county judge, who represents a remarkable combination of judicial and administrative functions. He is elected by the qualified voters of the county at each general election for a period of two years and until his successor shall have qualified. The only qualification required by law, aside from the general requirement of residence in the county, is that he shall be well informed in the law of the State, a requirement which seems to be very elastic, since no record can be found of any candidate ever having been disqualified on that ground. At any rate, neither admission to the bar nor a course of study in the law seem to be demanded by this requirement.¹ The county judge is required to furnish a bond of from \$1,000.00 to \$5,000.00, to be fixed and approved by the commissioners' court, conditioned upon his paying over within thirty days all moneys that come into his hands as county judge. He must take the constitutional oath of office and the oath required of the other county commissioners. He must have his office at the county seat and attend there from day to day, absence from the county being permitted only after formal permission by the commissioners' court, and in no case for more than ninety days. Vacancies in the office of county judge may be filled by the commissioners' court until the next general election. (Title 35, Ch. 1.) The county judge, like other county officers, may be removed by the judges of the district court for incompetency, official misconduct, habitual drunkenness, or other causes defined by law,² upon the cause therefor being set forth in writing, and the finding of its truth by a jury. (Const., Art. V, Sec. 24.) For failure to perform his duties

¹Service as county judge itself qualifies for the higher courts

²For supplementary legal provisions see Title 98, Chs. 2, 5.

as a member of the commissioners' court sitting as a board of equalization the judge may be removed after trial instituted in the district court by the attorney general. (Art. 7574.) Conviction for a felony or any misdemeanor involving official misconduct works an immediate removal of any county official, including the county judge. (Art. 6028.)

The judicial functions of the county judge as judge of the county court, with its extensive civil, criminal, juvenile and probate jurisdiction, are in no sense functions of county government and need not concern us here, though for the performance of some of these he receives remuneration from the county. It is worth while pointing out in this connection, however, that in all but the least populous counties these functions alone make a very considerable demand upon his time, and on the other hand may constitute the source of a very considerable income. (For fees allowed the county judge, see *infra* p. 32.)

The administrative functions of the county judge are very numerous and varied, but may for convenience be grouped under certain general heads. In the first place, his chief work as county administrative officer is that of member of the commissioners' court, the functions of which have been discussed in the preceding section. The county judge, when present at the terms of the court, is presiding officer, and though his presence is not requisite to action by the court, except in the levy of county taxes, his compensation as county commissioner is dependent on his attendance.

Next to his duties as member of the county commissioners' court, the chief class of administrative duties of the county judge relates to the matter of elections, both general elections and special elections, within the county and its subdivisions. In the conduct of general elections every two years, the proclamation of the Governor is sent to the county judge, who publishes the same. The county judge orders the election for county and precinct officers, and issues the writs and delivers them to the sheriff. The county judge, together with the sheriff and county clerk, constitute the

board for providing election supplies. The returns of elections are made to the county judge, who delivers the certificate of election to the successful county and precinct candidates. He performs the same functions for State senator or representative if his county constitutes a senatorial or representative district in itself. For representative and senatorial districts comprising more than one county, the county judge of a designated county performs that function. The county judge makes returns of the votes cast for all Federal, State, and district officers voted for in the county and certifies them to the Secretary of State. He must also notify the Secretary of State of the death of any State or district officer, member of Congress, member of the Legislature, or notary public in his county. (Title 49, Ch. 3, 7.)

The county judge is furthermore charged with the duty of ordering and conducting elections for the incorporation of towns or villages as well as the first election for officers of the same. (Title 22, Ch. 14.) In the same way the county judge conducts elections for the abolition of the corporate existence of incorporated towns and cities. (Title 22, Ch. 16.) The county judge also orders elections for the incorporation of independent school districts (Title 48, Ch. 16), for the levy of a school district tax, and for the issuance of schoolhouse bonds (Arts. 2828, 2837, 1922 Sup.), and issues the orders for elections authorized by the commissioners' court for preventing horses and cattle from running at large (Art. 7240).

Another group of functions of the county judge relates to his power of appointment. Among the officers he appoints are special commissioners to assess damages for the condemnation of land for a railroad right of way (Art. 6508), committees of pilotage in ports where the population does not warrant the appointment of commissioners of pilots by the Governor (Art. 6304), matrons for rest rooms in county courthouses (Art. 2273d, 1922 Sup.), probation officers (Art. 2196), temporary administrators (Art. 3297), appraisers for the estates of deceased persons (Art. 3330),

guardians of minors, persons of unsound mind, and habitual drunkards (Art. 4043), and appraisers of property for inheritance tax purposes (Art. 7492). Finally, the county judge appoints a road overseer whenever the overseer appointed by the commissioners' court is lawfully exempt from road service and refuses to serve.

The county judge acts as ex officio county school superintendent in counties having less than 3,000 scholastic population, unless the qualified taxpaying voters shall, by majority vote, decide to have a school superintendent. The county judge, acting as county school superintendent, performs all the duties of that office, gives an additional bond and receives additional remuneration as may be provided by the commissioners' court, not to exceed \$900.00 per year, (Arts. 2763-2766, 1922 Sup.)

The official bonds of county and district officers are normally payable to the county judge, the bond of the county judge himself being payable to the treasurer of the county. He also approves the bonds of a number of officers and other persons. The county judge must sign the courthouse, jail, and the bridge bonds issued by the county, and the schoolhouse bonds issued by the school district. He sells the bonds of drainage districts in the county, and he may be appointed by the commissioners' court to sell the bonds of improvement districts.

Among the ministerial functions of the county judge is the taking of acknowledgments of an instrument of writing for record. Similarly, the county judge is authorized to celebrate marriage ceremonies.

Finally, the county judge performs various miscellaneous duties, among which may be mentioned, certifying that persons who certify to the insanity of individuals presented for admission as private patients to public insane asylums are respectable physicians in regular practice in the county, examining application for admission as non-indigent patients to epileptic colonies, receiving and acting on applications for pensions for Confederate veterans and their widows, to be paid out of the county treasury, appointing

a committee of inspection for examining horses or mules said to be affected with glanders or farcy, and ordering them killed.

In counties having less than 15,000 population and a road and bridge fund of less than \$12,000, the commissioners' court may designate the county judge ex officio road superintendent with a salary varying from \$500.00 to \$800.00 per year. (Art. 6976 $\frac{1}{2}$, 1922 Sup.)

The county judge is paid for his services mostly in fees. These fees are generally paid by the party for whom the service is rendered, but sometimes out of the county treasury. He may retain all the fees received up to the sum of \$2,250.00 a year in counties having less than 2,500 inhabitants.³ In counties having more than that population the maximum is \$2,500.00, but in counties having a city of over 25,000 inhabitants, or having, according to the 1910 census, a population of 37,000 inhabitants, the maximum is \$3,500.00 per annum. This does not, however, represent the maximum amount of money obtainable even from the fees, as the county judge is entitled to one-fourth of all fees in excess of the maximum amounts just noted, until the one-fourth reaches the sum of \$1,200.00 in counties having less than 25,000 inhabitants; \$1,250.00 where the population is between 25,000 and 38,000; and \$1,500.00 where the population is in excess of 38,000. Furthermore, when the judge's compensation and excess fees do not reach the maximum allowed, the commissioners' court may pay him a salary for what are called ex officio services, including the presiding over the commissioners' court, ordering elections and making returns thereof, hearing and determining civil causes, and transacting all other official business not otherwise provided for. The position of county judge may, therefore, be a very lucrative one and is much sought for that reason.

³Some of the articles use the 1910 census, others the "last census."

CHAPTER V

OTHER JUDICIAL OFFICERS

COUNTY ATTORNEY—SHERIFF—COUNTY CLERK

County Attorney.—The county attorney is, unlike the county judge, almost wholly a judicial officer of the State and has very little to do with the administration of the county. Inasmuch, however, as he represents the county in a legal way, and performs certain administrative functions for the county, and, above all, since he is elected by the voters of the county, he must be regarded as a county as well as a State officer, and a brief description of the functions of the office is necessary.

In every county, except those in which there is a resident criminal district attorney, there is elected by the qualified voters of the county for a term of two years, a county attorney, who is commissioned by the Governor. He is required to take the constitutional oath of office and to execute a bond in the sum of \$2,500.00, approved by the commissioners' court and payable to the Governor, conditioned on paying over all money which may come into his hands for the State or county. The county attorney must be an attorney at law, duly licensed to practice in the district courts of the State.

Of the functions of the county attorney as representative of the State in criminal prosecutions in the county and district courts, nothing need be said here, except to point out the fact that so far as the institution of prosecutions is concerned the enforcement of the State's criminal laws in the county against residents of the county is left in the hands of an officer politically responsible to the electorate of the county, with but ineffective means of control of the State.

The county attorney represents the county in civil suits, particularly in the enforcement of taxes, may with the advice and consent of the commissioners' court buy in and

dispose of property sold under execution or order of sale issued upon any judgment in favor of the county, gives, upon request, opinions in writing to the assessor and collector of taxes and treasurer of the county touching their duties concerning the revenue of the State or county, and to the county clerk, sheriff or other officer such advice as he may deem necessary to insure the prompt collection of all money for which judgments may have been rendered in favor of the State or county. In like manner, it is the duty of the county attorney to give his opinion in writing to all county and precinct officers on points touching their duties when requested to do so. It is his duty to institute proceedings against any officer in the county intrusted with the collection and safekeeping of any public funds to compel him to perform his duties and preserve the public interests, and it is also his duty to institute quo warranto proceedings against individuals who have usurped a public office, or against officers who have done or suffered any acts which under the law work forfeiture of office.

The county attorney is required to give a receipt for all moneys collected by him for the use of the county, to make sworn accounts of all such moneys received, and to pay it over to the treasurer within thirty days, less the commissions allowed him by law. He is also required to keep a register of all official acts and reports, and all actions or demands prosecuted or defended by him, and to deliver such register to his successor in office.

The county attorney is paid by means of commissions on moneys collected by him for the State and for the county. The maximum of his fees varies from \$2,250.00 to \$4,000.00, according to the size of the county, plus one-fourth of the excess of fees, as in the case of the county judge, except that in counties having a population of over 100,000 the amount from excess fees may be \$2,000.00. Where the county attorney performs the functions of the district attorney, he receives the compensation allowed the latter, which is slightly higher than that paid county attorneys. With the consent of the commissioners' court he may appoint not to

exceed three assistant county attorneys, to hold office during his pleasure. In case of vacancy in the county attorney's office, the commissioners' court fills such vacancy until the next general election. The county attorney is removable from office by the judge of the district court for incompetency, official misconduct, or drunkenness, and by conviction for any felony or any misdemeanor involving official misconduct.

In those counties in which there is a resident criminal district attorney, he performs all the functions of county attorney for that county.

The Sheriff.—The sheriff performs a three-fold function, involving both State and local activities. He is executive officer of the court, conservator of the peace, and administrative official. In every county there is elected by the qualified voters of the county a sheriff, to hold office for two years and until his successor is elected and has qualified. Vacancies in the office are filled by the commissioners' court until the next general election. He must give bond for \$5,000.00 to \$30,000.00, payable to the Governor, for the faithful performance of his duties; and he may be removed from office in the same manner as the county attorney. Like all other county officers, he receives his commission from the Governor. Upon authorization of the county commissioners' court he may appoint deputies, for whose official acts he is responsible. These deputies may perform any act for the sheriff, and may be required by him to give bond. Special deputies charged with the duty of enforcing traffic laws, and known as county traffic officers, may be appointed by the commissioners' court.

The duties of the sheriff as executive officer of the courts comprise, among other things, attendance upon all district, county, and county commissioners' courts for his county; executing all processes of the courts or of the Legislature, serving writs, summoning jurors, taking charge of juries, keeping order in the courtroom, and in general executing all orders of the court.

As conservator of the peace, the sheriff is charged with the duty of preventing crimes and misdemeanors, the assembling of mobs, and other breaches of the peace, and has the power and duty of arresting offenders. For these purposes, as well as for overcoming resistance in the execution of any legal process, the sheriff may summon the posse comitatus, or power of the county, by calling on any person for aid.

The other administrative duties of the sheriff comprise the control of the courthouse and jail, guarding and feeding the prisoners, and acting as collector of taxes in counties having less than 10,000 inhabitants. The sheriff also delivers to the presiding officers of the election precincts the writs of election delivered to them by the county judge. The sheriff acts with the county judge and county clerk as a board to provide supplies for elections, serves notices, and delivers election supplies to the precinct officers.

The sheriff is paid by fees in amounts fixed by law for serving citations, summoning witnesses, levying and returning writs of attachment and executions, serving writs of garnishment, injunction, and other processes, and all of the different functions connected with his duties as executive officer of the courts. He receives, in addition, 5-cent mileage for travelling in the services of processes and in the conduct of prisoners. Furthermore, for performing so-called ex officio functions, such as summoning jurors, serving election notices, etc., he may be paid, on order of the commissioners' court, an annual salary of not more than \$1,000.00 out of the general funds of the county. However, the maximum compensation which a sheriff may receive from all sources varies with the population of the county from \$2,750.00 to \$3,500.00 with the addition of excess fees on the same scale as in the case of the county judge, in any case exclusive of amounts received as rewards.

County Clerk.—The county clerk is another officer who combines functions connected with the administration of justice with other administrative activities. In his case, however, the non-judicial administrative functions occupy

a more considerable share of his time than is the case with the sheriff, though his principal title is clerk of the county court and his other duties are regarded as secondary.

A clerk of the county court is elected by the qualified voters of every county for a period of two years and until his successor is duly qualified. Vacancies in the office are filled by the commissioners' court until the next general election. He must give bond payable to the Governor and approved by the commissioners' court in the sum of from \$2,000.00 to \$10,000.00, for the faithful performance of the duties of his office, and must take the constitutional oath of office. He has power to appoint such number of deputies as may be authorized by the commissioners' court, who may perform all his official acts. (Title 35, Ch. 2.)

In his capacity as officer of the county court he keeps a record of all acts done and proceedings had in the court, enters the judgments of the court, and keeps a record of all executions issued and of the returns thereon. He must keep complete alphabetical indexes of the names of parties to all suits filed in the county court. He is the keeper of the records, books, papers and proceedings of the county court in civil and criminal matters and matters of probate, and must see that they are properly indexed, arranged, and preserved. He receives the jury fees and fines and pays them over to the county treasury. The county clerk receives the list of jurors from the jury commissioners, makes a copy of the jurors selected for each term, and delivers same to the sheriff. He swears and impanels the jury and swears the witnesses in court. (*Ibid.*)

The chief functions of the county clerk as a county officer are those connected with his ex officio position as clerk of the commissioners' court. As such he attends upon each term of the court, issues all notices, writs and processes required by the court, keeps the records, books, papers, and proceedings of the court, and sees that they are properly indexed, arranged, and preserved. (Art. 1753.)

A very important group of activities of the clerk relate to

his duties in connection with county finances.¹ He is charged with the duty of keeping in a well-bound ledger and index to be furnished by the commissioners' court, a full, complete and orderly statement of the condition of the finances of the county. In said book, known as the finance ledger, he keeps an account with every officer who is authorized or required to receive or collect money for the use of or belonging to the county. He must balance each account and make a tabular statement under oath at each regular term of the commissioners' court for the preceding quarter, specifying the names of creditors of the county and items of indebtedness with their dates of accrual, and also the names of persons to whom moneys have been paid, with the amounts paid each, as well as the names of persons from whom moneys have been received, with the date of receipt and for what account received. This statement must show the amount to the credit or debit of each county fund separately. He must publish a summary of such statement once a year, at the cost of the county. All reports of officers relating to finances must be filed with the county clerk. The county commissioners' court examines these accounts and reports, and corrects and approves them.

The county clerk is charged with a considerable number of miscellaneous functions, most of which are purely ministerial, that is, involve no exercise of discretion. Among these may be mentioned the duty of recording all instruments of writing authorized or required to be recorded, in proper books in the manner prescribed by law. Such instruments include deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods and chattels, or movable property. (Title 118, Ch. 1, 3.) He is also authorized to take acknowledgements of instruments of writing for record, and to that end administer oaths, to employ and swear interpreters, issue subpoenas, and punish for contempt. (*Ibid.*, Ch. 2.)

¹Title 29, Ch. 1.

The county clerk receives and files the monthly reports of the inspector of hides and animals, takes charge of county land records when there is no qualified county surveyor, records the proceedings of the navigation board of districts within the county, makes copies of the appointment of juries of view for public roads, and of road overseers, acts as wreck-master when there is no wreck-master in the county, and obtains and deposits in his office the seal, record books, and all public papers of notaries public whose offices become vacant by resignation, removal, or death.

The county clerk receives the registration required of butchers in certain counties, and issues hunting licenses on conditions prescribed by law. He also issues and records marriage licenses. Finally may be mentioned the duty of the county clerk to publish names of candidates who have received the necessary vote to be nominated in the primary elections.

For all of these activities and others that have not been enumerated, the county clerk is paid in fees and salaries. The fees for his services in connection with the duties imposed upon him as clerk of the county court are fixed by law and are limited to a maximum of from \$2,250.00 to \$2,750.00, according to the size of the county, plus one-fourth of the excess fees, as in the case of the county judge. This includes the sum of \$100.00 that may be allowed by the county judge out of the county treasury for the care and preservation of the records. For his *ex officio* duties, particularly those connected with matters of county administration, he may be paid a salary out of the county treasury upon order of the commissioners' court of from \$50.00 to \$500.00 a year, according to the population of the county.

The county clerk is removable in the same way as are all other county officers, namely, by conviction for a felony or by action of the district court.

In all counties having a population of 8,000 persons or more, there is elected by the qualified voters of the county

a clerk for the district court whose functions are virtually the same for that court as are those of the county clerk for the county court. He is a county officer only in the sense that he is elected by the voters of the county. In counties having a population of less than 8,000 persons, only one clerk is elected, who performs the function of clerk both for the district and for the county court.

CHAPTER VI

FINANCE OFFICIALS OF THE COUNTY

TAX ASSESSOR—TAX COLLECTOR—TREASURER—AUDITOR

The financial officers of the county are, like almost all of are so-called county officers, charged with the duty of collecting and preserving State revenues as well as those used by the county, and their duties in both these regards are determined almost entirely by enactments of the State Legislature, the county as a local government corporation having little to say as to the extent of their functions or the manner of their exercise.

County Tax Assessor.—There is elected by the qualified electors of every county in the State, at the general election, an assessor of taxes, to hold office for two years and until his successor is elected and qualified. Vacancies in this office are filled until the next general election by the commissioners' court of the county. He must give bond for the faithful performance of his duties both to the State and to the county, payable in the one case to the Governor, in the other case to the county judge of the county, amounting in each case to one-fourth of the amount of the respective tax, but not more than \$10,000.00 in the case of the State bond, and not more than \$5,000.00 in the case of the county bond. He must, in addition to the constitutional oath of office, take an oath to perform his duties faithfully and impartially. When so authorized by the commissioners' court, the assessors may appoint one or more deputies, for whose acts they are liable and from whom they may require bond and security in the amount deemed necessary for the indemnity of the assessor, such deputies being required to take the same oaths of office. (Title 126, Ch. 12.)

The law specifies the time and manner of making the annual assessment of taxable property, both real and personal, prescribing the forms which shall be used, the form

of oath to be administered to the owner by the assessor, and the penalty for failure on the part of the assessor to administer such oath. The assessment must be made between January 1 and April 30 of each year. The assessor must make a statement on or before July 15, to the State Comptroller, showing the total amount of property in his county subject to taxation. The commissioners' court acts as a board of equalization between the second Monday in May and the first day of June.

In addition to assessing the general property taxes for the State and county, the tax assessor also makes the assessments for improvement districts, for independent and common school districts, for navigation districts, for drainage districts, and for road districts within the county. Under the terms of an act passed by the Legislature in 1921, any incorporated city, town, or village within the county limits may avail itself by ordinance of the services of the county tax assessor; in such cases the assessment is the same as for State and county purposes. (Art. 9380, 1922 Sup.)

The tax assessor is paid a compensation for his services in assessing State and county taxes based upon the total values of all property assessed, one-half by the State and one-half by the county, and 5 cents for every poll tax assessed, to be paid by the State, the maximum compensation allowed varying from \$2,000.00 to \$2,750.00, according to the population of the county; in addition the assessor may retain a portion of excess fees in amounts ranging up to \$1,500.00 under the same conditions as the county judge. The county commissioners' court may allow him a sum of money for clerical work in making assessments for the county, not to exceed the amount due him for the assessment. For his activities in assessing the taxes for cities and special districts within the county he is allowed additional compensation, paid by the districts.

In the unorganized counties of the State, the assessment of property for taxation owned by residents of the county is intrusted to the tax assessor of the organized county to

which the unorganized county is attached for judicial purposes, and the Comptroller of the State makes the assessment of all lands in unorganized counties which are owned by non-residents of the unorganized counties.

County Tax Collector.—In every county of the State having, according to the preceding census of the United States, 10,000 inhabitants or more, there is elected by the qualified voters of the county at the general election a collector of taxes to hold office for two years and until his successor is elected and qualified. Vacancies in this office are filled until the next general election by the commissioners' court. In counties having less than 10,000 inhabitants, the sheriff is collector of taxes. The tax collector must give bond for both State and county taxes, equal in each case to 40 per cent of the amount of the State and county tax, respectively, for the preceding assessment, conditioned upon the faithful performance of his duties. He may appoint, upon authorization by the commissioners' court, one or more deputies for whose acts he is responsible and from whom he may take such bond and security as he deems necessary for his indemnity.

The collector of taxes is the receiver and collector of all taxes assessed upon the tax list of his county, whether assessed for State or county, school, poorhouse, or other purposes, as well as occupation, poll, and other unassessed taxes. After receiving the assessment rolls or books of the county, he begins the collection of taxes annually on the first day of October. He must post in each voting or magistrate's precinct, twenty days prior to the day the taxpayers of the county are required to meet him for the purpose of paying taxes, a notice stating the times and places the taxes are required to be paid.

At the end of each month the collector must make an itemized report to the comptroller showing every item of ad valorem, poll, and occupation tax collected by him during the month, accompanied by a summarized statement showing

full disposition of all State taxes collected. He must present the report together with the tax receipts stubs to the county clerk for examination and certification to the commissioners' court. He is required to forward the certified reports to the State Comptroller and the State money collected to the State Treasurer, reserving his commissions. He is required to make a like report as to the county moneys to the commissioners' court and to pay over immediately to the county treasurer all taxes collected for the county during the month, after reserving his commissions. He must appear at the next regular meeting of the commissioners' court and make a summarized statement, showing the disposition of all moneys, both State and county, collected by him during the previous three months. The commissioners' court examines the statement and vouchers together with the itemized report and tax receipt stubs filed each month, and if they are found to be correct enters an order approving the same. The tax collector must make out an annual report between April 1 and 15 of all delinquent or insolvent taxpayers.

In case of failure of any person to pay the taxes imposed upon him or his property by law by January 1 next succeeding the return of the assessment roll of the county to the Comptroller, the collector must seize and levy upon so much personal property belonging to such person as may be sufficient to pay his taxes with all costs accruing thereon. If the delinquent has not sufficient personal property in the county subject to seizure and sale to satisfy all taxes due by him, the collector must seize so much of the real estate as will be sufficient, and sell the same in the manner prescribed by law. (Title 126, Ch. 13.)

In addition to the collection of State and county ad valorem, poll, and other State taxes, such as the inheritance tax, occupation, and license taxes, the tax collector is also charged with the duty of collecting the taxes for the special districts within the county, such as school districts, improvement districts, navigation districts, drainage districts, and road districts, paying them over to the authori-

ties charged with their custody in each case. He must perform the same function for any incorporated city, town or village in the county when the governing authorities of such place by ordinance direct him to do so. (Art. 938a-938e, 1922 Sup.) He also collects the taxes in cities whose corporate existence has been abolished, for the purpose of meeting the indebtedness of such city. In unorganized counties the taxes upon lands of non-residents are collected by the State Comptroller, the taxes upon property of residents being collected by the tax collector of the county to which the unorganized county is attached for judicial purposes.

It is the duty of the tax collector to certify to the various election authorities lists of persons who have paid poll taxes or have taken out exemption certificates. (Art. 2939f, 1922 Sup.)

The tax collector is paid by commissions based on the amount of taxes collected for the State and county. The maximum commissions for such collection vary from \$2,250.00 to \$2,750.00, according to the population of the county, plus one-fourth of the excess of such commissions on the same terms as the county judge. In addition, the collector may receive compensation from the county upon order of the commissioners' court, for ex officio services for the county. For his services in acting as collector for cities and special districts within the county, he receives additional commissions.

County Treasurer.—In each county there is elected by the qualified voters of the county at the general election for State and county officers a county treasurer, to hold office for two years and until his successor is elected and qualified. The county treasurer, unlike the assessor and collector of taxes, performs functions for the county and its subdivisions only, not for the State, and is in that sense more truly a county officer. He therefore gives bond only to the county authorities. Vacancies in the office are filled by the commissioners' court until the next general election. (Title 30, Ch. 30.)

He receives all moneys belonging to the county from whatever source they may be derived, and pays and applies the same as required by law, in such manner as the commissioners' court may require and direct. He must keep a just and true account of the receipts and expenditures of all moneys which come into his hands by virtue of his office, and direct prosecutions according to law for the recovery of all debts that may be due the county. He must render a detailed report at every regular term of the commissioners' court, of all moneys received and disbursed by him, of all debts due to and from the county, and all other proceedings in his office, and must exhibit to said court at every regular term all his books and accounts for their inspection and all vouchers relating to the same, to be audited and allowed. He may not pay any money out of the county treasury except in pursuance of a certificate or warrant from some officer authorized by law to issue the same. If he has any doubt of the legality or propriety of an order, decree, certificate, or warrant presented to him for payment, he may not pay the same, but must report it to the commissioners' court for their consideration and direction. He must examine the accounts, dockets and records of the clerks, sheriff, justices of the peace, constables and tax collector of the county for the purpose of finding out whether any moneys belonging to the county are in their hands which have not been accounted for and paid over according to law, and must report the same to the commissioners' court at the next term. (*Ibid.*)

The county treasurer must report to the county clerk who keeps an account with him in the county finance ledger in which the treasurer is charged separately with the amount of each fund for which he gives a receipt to the sheriff, collector, or other person paying the same into the treasury. He is credited therein with all moneys paid out by him and approved by the commissioners' court, and for his legal commissions. The county treasurer registers all claims against the county, and all claims must be so registered before they

can be paid by the treasurer or received by any officer in payment of any indebtedness to the county. The funds received by the treasurer are classified according to law, but the commissioners' court may create new classes of funds, and transfer funds from one class to another, except jury fees, moneys from sale of estrays, and occupation taxes, which belong in a special fund to be used first for the payment of jury fees and scrip for feeding jurors. The commissioners' court, at the time of examining the reports of the treasurer, must actually inspect and count all cash in the hands of the treasurer belonging to the county. (Title 29, Ch. 1.)

In addition to receiving and caring for county funds, the county treasurer receives the funds of drainage, improvement, navigation, and road districts.

The county treasurer is required by law to deposit all moneys of the county, or the subdivisions mentioned above, held by him in the county depository. The county depository is designated by the commissioners' court in the manner prescribed by law, and the treasurer pays out the money by means of checks drawn upon the depository, indicating the fund upon which the check is drawn. The funds of the school districts in the county are not paid over to the county treasurer, but to the county depository which, however, is called, in its relation to school funds, the county treasurer or county treasury. But the county treasurers are also treasurers of the available public free school fund and of the permanent county school fund of the county.

The county treasurer is paid by commissions based on the amount of money received and expended by him. The maximum of his commission is limited by law to \$2,700.00.

The county treasurer, like the assessor and the collector of taxes, is removable from office by conviction for a felony or for a misdemeanor involving official misconduct, and by order of the district judge for incompetency, official misconduct, or drunkenness. (Title 98, Ch. 2.)

County Auditor.—In counties having a population of 35,000 inhabitants or over, or having assessed values of more than \$15,000,000.00, and in other counties where such officer is declared by the commissioners' court to be a public necessity, there is another financial officer known as the county auditor. He is appointed for two years by the district court. The auditor, unlike the other county finance officers, must have special qualifications. He must be a man of unquestionably good moral character and intelligence, thoroughly competent in public business details, and must be a competent accountant with at least two years' practical experience in auditing and accounting. Of course, with the exception of the last provision, these qualifications are incapable of exact legal determination. The auditor himself is required to state under oath that he is in every way qualified under the provisions and requirements above mentioned. He must also take oath that he will not be personally interested in any contract with the county. He must give bond in the sum of \$5,000.00, payable to the county judge, for the faithful performance of his duties.

The auditor may appoint an assistant to act in his stead when he is prevented from acting, the county judge to approve of the appointment. He may also appoint additional clerical help when needed, with the consent of the county judge or of the commissioners' court. He provides himself, at the expense of the county, with all necessary ledger books, records, blanks, and stationery. His salary is based on the assessed valuation of the county, and may not exceed \$3,600.00, which is paid out of the general fund of the county, upon order of the commissioners' court. In addition he is paid for services rendered to special districts within the county.

The auditor has general oversight of all the books and records of all the officers of the county, district, or State, who are authorized or required to receive or collect any money, funds, or fees or other property for the use of or belonging to the county. He has continual access to and

must examine all the books, accounts, reports, vouchers and other records of any of these officers, as well as the orders of the commissioners' court relating to the finances of the county. At least once in each quarter he must check the books and reports of the officers in detail, verifying the footings and correctness of the same, and must stamp his approval thereon or note any differences, errors or discrepancies. He is authorized to prescribe and prepare the forms to be used in the collection of county revenues, funds, fees and all other moneys, and the mode and manner of keeping and stating the accounts, and making reports. All deposits in the county treasury must be made upon deposit warrants, a copy of which must be turned into the county auditor for entering upon his books. The county auditor must examine and approve all claims against the county before action by the commissioners' court. He prepares the estimates of all revenues and expenditures for the county to be submitted to the commissioners' court as the basis for the budget to be prepared by them. It is the duty of the auditor to advertise for bids on supplies of every kind to be used by the county and to keep the bids received on file as a part of the records of his office, subject to inspection by anyone interested. (Art. 1480, 1922 Sup.)

In the counties in which there is a county auditor the financial duties imposed upon the auditor are taken away from the county clerk. The auditor is removable for official misconduct by the same authority which appointed him, and which thereupon appoints his successor.

In those counties having less than the required population for the appointment of an auditor, there is no separate auditing authority, but in all counties at the request of the grand jury at each term of the district court, the district judge may appoint a committee of three citizens, of good moral character and intelligence and experienced accountants, to examine into the condition of the finances of the county. (Arts. 1453-1456.)

CHAPTER VII

COUNTY SCHOOL AUTHORITIES¹

The general management and control of the public free schools in each county is vested in five county school trustees elected from the county, one of whom is elected from the county at large by the qualified voters of the common school districts, and one from each commissioner's precinct, by the same qualified voters of such precinct. The term of office is two years and until their successors qualify, the terms of two commissioners expiring in April of the even-numbered years and of the other three in the odd numbered years. The time for the election of the county trustees is the same as that for the election of trustees of the common school districts, the first Tuesday in April, and the election is held in the same places.

The county clerk issues the commissions to the county trustees on behalf of the commissioners' court, which canvasses and declares the results of the election. The county trustees must be qualified voters of the precinct or county from which they are elected, must be of good moral character, able to read and speak the English language, persons of good education, and in sympathy with public free schools. Vacancies in the office of a county school trustee are filled by election by the remaining trustees.

The duties of the county school trustees, commonly called the county board, are to classify the schools of the county in accordance with the regulations of the State Superintendent of Public Instruction into elementary schools and high schools, for the purpose of promoting the efficiency of the elementary schools and of establishing and promoting high schools at convenient and suitable places, in conference with the county superintendent of public instruction and the

¹See Compilation of the Public School Laws, issued by the Department of Education in 1924 with a supplement for 1925.

school trustees of each district at interest. In coöperation with the county superintendent, also, the county board is to prescribe a course of study for the public schools of the county, in conformity with the general law and the requirements of the State superintendent. The county school trustees are authorized to exercise the authority heretofore vested in the commissioners' court with respect to subdividing the county into school districts and to making changes in district lines. They call an annual meeting of the district school trustees of the county, at the county seat, and such additional meetings as may be desired by the county board or by a majority of the district trustees, for the purpose of considering all matters of interest in school affairs of the county. The county board may consolidate two or more common school districts into a larger district, if petitioned by a majority of the qualified electors of the districts affected, for the purpose of establishing a high school in the larger district.

The county school trustees is a body corporate, with the power to acquire and hold real and personal property, to sue and be sued, and to perform other acts for the promotion of education in the county. The title to any school property belonging to the county, which formerly vested in the county judge, or of any school property that may be acquired, vests in the county board for public free school purposes.

The county school trustees, together with the county superintendent of public instruction, apportion the available State and county school funds among the common school districts and the independent districts having less than 150 children of scholastic age. The county trustees also hear appeals from the decisions of the county superintendent, and appeal lies from them to the State superintendent and from him to the State Board of Education. The county trustees meet regularly once a quarter on the first Monday in February, May, August, and November, and in special meetings upon the call of the president of the board or of any two members and the county superintendent, at the

county seat. The trustees are paid \$3.00 per day for the time spent in attending meetings, to be paid out of the general fund of the county, in a maximum amount of \$36.00 a year.

The county superintendent of public instruction is the secretary and executive officer of the county board. The superintendent is elected in all counties having 3,000 scholastic population according to the preceding scholastic census, by the qualified voters of the county, at each general election for the term of two years, and until his successor is qualified. He must under the law be a person of educational attainment, good moral character, and executive ability. Specifically, he must be the holder of a teacher's first-grade certificate or teacher's permanent certificate. In counties having less than 3,000 scholastic population, the office of superintendent of public instruction may be created upon petition of 25 per cent of the qualified voters of the county and a majority of the qualified property taxpaying voters, at an election held for that purpose. Otherwise the county judge acts as county superintendent, *ex officio*. Whenever the county board deems advisable, it may make provision for the employment of a competent assistant superintendent, who, in addition to other duties, shall serve as attendance officer. (Art. 2758, 1922 Sup.)

The county superintendent has three classes of duties, those exercised conjointly with the board, those involved in his position as secretary and executive officer of the board, and those imposed upon him independently by law. The county school superintendent was, until 1915, the only county educational officer, and the functions which he now shares with the county board, such as apportioning the school fund, were, prior to that time, exercised by him alone. As secretary of the county board, he is charged with keeping accurate official record of all the proceedings of the board, open to public inspection.

Most of the functions of the county superintendent are those imposed upon him by law prior to the recent provision

of county school trustees and which have been left in his hands. His duties are varied and numerous. He has immediate supervision of all matters pertaining to public education in his county, under the direction of State Superintendent of Public Instruction, to whom he reports. He confers with teachers and trustees of school districts, gives them advice when needed, visits and examines schools, and delivers lectures tending to create an interest in public education. He is expected to spend as much as four days in each week visiting schools. His authority extends over all public schools in the county except those of the independent school districts having a scholastic population of 500 or more. He must organize and hold within the first four months of the scholastic year, one institute of five consecutive days for white and colored teachers, respectively, and compel attendance of teachers. He must approve all vouchers legally drawn against the school fund of the county, and approve contracts between school trustees and teachers in the county. He distributes all school blanks and books to the officers and teachers of the public schools, and makes such reports to the State superintendent as may be required by him. He appoints the county board of examiners. The county superintendent appoints the census trustee to take the annual scholastic census for every common school district and furnishes to the superintendents and principals of schools the list of scholastics for the purpose of enforcing the compulsory attendance law. The reports of the public school teachers must be filed with the county superintendent when the teachers present their monthly salary vouchers. The county superintendent must examine all applicants for teachers' certificates as to their good moral character, ability to speak and understand the English language sufficiently to use it readily and easily in conversation and instruction. He must also keep a record of all certificates held by persons teaching in the public free schools. He hears appeals from the decisions of the district school authorities.

The county superintendent receives a salary out of the available school fund of the county, varying from \$1,600.00 to \$2,800.00 a year, according to the scholastic population of the county. He may be allowed an amount up to \$300 per year by the county board for office and traveling expenses.

In 1923 the Legislature passed a law providing that counties having a population of 100,000 or over, according to the census of 1920, might adopt the county unit system as described in the act. Upon petition of 500 qualified voters of such a county the county judge calls an election; and a majority of those voting may adopt the county unit plan. The county board is increased to seven members, one from each commissioners' precinct and three at large, and the term is lengthened to four years; the first seven members are divided into two groups, and thereafter four members and three members are elected at alternate elections. Members of the board must be persons of good moral character, with at least a fair elementary education, of good standing in the community, known for honesty and business ability, public spirit and interest in the promotion of public education. Vacancies are filled by the remaining members of the board. Regular meetings are held quarterly and special meetings when necessary. Members of the county board are paid \$5.00 per day, for not more than twenty days in the year.

It is the duty of the county board to maintain a uniform and effective system of public schools throughout the county, and with and on the advice of the county superintendent determine the educational policy of the county and make rules for the management of the schools. The board is authorized to consolidate schools and make arrangements for the transportation of pupils to and from such consolidated schools. Principals, teachers, clerical and professional assistants are appointed and released, courses of study are prescribed, and schools are graded and standardized by the board. All schools within the county are to open on the same date, to be fixed by the county board of education.

The board provides for the taking of the scholastic census and appoints the enumerators. Each school district within the county elects a board of trustees for each school, and this board looks after the general interests of the school, reporting to the county board from time to time.

At an election held for that purpose, the voters of the county may authorize the board to levy a tax of not more than \$1.00 for purposes of school maintenance and the retirement of bonds, which tax is independent of the tax that each district within the county may levy. Taxes are assessed and collected by an assessor and collector, and the value of the property is equalized by a board of equalization, appointed by the county board. District taxes are levied by the county board in an amount fixed by the trustees of the district. The board is also charged with the duty of framing the school budget for the county, taking into account all moneys from whatever source derived.

The county board appoints a county superintendent for a term of two to five years and fixes his compensation, which may not be less than \$1,500.00 per year. By an affirmative vote of five or more of its members the board may remove the superintendent for immorality, misconduct in office, incompetency or willful neglect of duty, or when, in the opinion of the board, the best interests of the school require it. The county superintendent is given broad powers in the administration of the school affairs of the county. He is the executive officer of the board and sees that its rules and regulations are carried into effect. His recommendations embrace types and locations of schools, educational policies, building programs, regulations governing admission to high schools, plans for consolidation of schools, courses of study and standardization of schools. He nominates all employees. The task of preparing the budget for submission to the county board has been assigned to him. He acts as representative of the State board in the conduct of examinations for teachers' certificates. He organizes teachers' institutes, visits the schools, and advises

with the principals and trustees, prepares all forms, sees to the enforcement of the compulsory attendance laws, and makes reports to the State Superintendent of Public Instruction.

Any county adopting the county unit system may abandon it by election after a trial of two years or more.

CHAPTER VIII

MINOR COUNTY OFFICERS

COUNTY SURVEYOR—COUNTY HEALTH OFFICER—INSPECTOR OF HIDES AND ANIMALS—JUSTICES OF THE PEACE

*County Surveyor.*¹—A county surveyor is elected in every county by the qualified voters for a term of two years, at every general election. He must give bond payable to the Governor, for the faithful performance of the duties of his office. Vacancies in the office are filled until the next general election by the commissioners' court. The duties of the county surveyor are to receive and examine all field notes of surveys made in the county and upon which patents are to be obtained, and to certify the same and record them in a book kept for that purpose. It is his duty to report to the commissioners' court in June of each year the number of sections of public school lands in the county inclosed during the past year, and the names of persons controlling such inclosed lands, and the number of sections controlled by each of them. The surveyor must record for public inspection all the surveys in the county with the plats thereof, which he must make every three months of all surveys made in the county. He must transmit sketches and field notes of the same to the Commissioner of the General Land Office, together with a list of all land certificates or warrants on file in his office. The necessary record books are to be furnished by the commissioners' court.

The county surveyor may appoint as many deputies as necessary for his county, and they in turn employ chain carriers and markers. The appointment of deputy surveyors must be reported to the Commissioner of the General Land Office. The county surveyor must keep in his office for public inspection a map on which all the surveys made in the county are laid down and properly connected, which

¹Title 79, Ch. 4.

map must be corrected every three months.

The county surveyor must establish, at the expense of the county, a true meridian at some convenient place at the county seat, to be marked by a substantial monument, and must keep in his office a standard chain of the true measurement of ten varas to which all chains used by him or his deputies shall be adjusted.

In case there is no qualified county surveyor, the county clerk is required to take charge of all records, maps and papers belonging to the county surveyor's office and keep the same in his office. The county surveyor is paid in fees for his services in inspecting and recording field notes, in recording surveys and plats, examining papers and records in his office at the request of any person, making copies of papers and records in his office, making surveys, and designating homesteads. The amount of fees for each kind of service is specified by law, but there is no maximum amount designated.

*County Health Officer.*²—In every organized county in the State there is a county health officer. This officer is appointed for two years by the commissioners' court. He must be a competent physician, legally qualified to practice under the laws of the State, and of reputable professional standing. He must subscribe to the constitutional oath of office and must file a copy of such oath, and a copy of his appointment with the State Board of Health, before he has legally qualified. His duties are to care for the prisoners in the county jails, the inmates of county poor farms, and hospitals. He must enforce county quarantines and other orders of the commissioners' court and of the State Board of Health; and must assist the State Board of Health in all matters of local quarantine, inspection, disease prevention and suppression, vital and mortuary statistics and general sanitation within the county. He must report to the State Board of Health on all matters and in the form required by them and assist in the enforcement of all the

²Arts 4538, 4539, 4543, 4546.

rules, regulations, requirements, and ordinances of said board. The county health officer is at all times subject to the direction of the State Board of Health, in all matters concerning which the board is clothed with authority. Failure to obey the orders of the board constitutes malfeasance in office and subjects the health officer to removal by the district judge on the relation of the State board, after hearing before the commissioners' court, from whose decision appeal lies to the district court. The county health officer is, moreover, removable for the other causes in the other ways in which all county officers are removable.

The compensation of the county health officer is fixed by the commissioners' court, such compensation to be paid, however, only for services actually rendered, presumably on the basis of the number of distinct official acts performed.

*Inspector of Hides and Animals.*³—The law provides that in every organized county, not expressly excepted, there shall be elected an inspector of hides and animals by the qualified voters at each general election, to serve for two years. About two-thirds of the counties of the State are expressly excepted, and in the counties to which the law applies there is the possibility of a local referendum to determine whether or not the county is to have an inspector of hides and animals. It is the duty of the inspector faithfully to examine and inspect all hides or animals known or reported to him as sold or as leaving or going out of the county for sale or shipment, and all animals driven or sold in his county for slaughter, packeries, or butcheries. The inspector must keep his records in a well-bound book, to be open to public inspection, and return a certified copy of all entries each month to the clerk of the county court. Such entries must show the number, marks and brands of all animals and hides inspected by him and the ages of the animals. He may not certify unbranded animals or hides, but may seize the same and report the fact to the justice of the

³Title 124, Ch. 7.

peace, the judge of the county or of the district court, according to the value of the property seized, and the same shall be sold, unless satisfactory proof of the ownership is given. The function of the inspector of hides and animals is, therefore, to assist in preventing the disposal or sale of stolen animals.

The inspector of hides and animals is paid by means of fees paid for each hide or animals inspected, and out of the proceeds of the sale of animals seized and sold under the provisions of the law. Vacancies in this office, as in those of other county offices, are filled until the next general election by appointment of the commissioners' court. In case of their failure to make such appointment the sheriff acts as inspector of hides and animals.

*Justices of the Peace.*⁴—While for most purposes, justices of the peace have jurisdiction over the particular justice precinct, they are charged with one duty which must be considered in connection with the county as a whole. Whenever any person dies in prison; when any person dies an unnatural death, except under sentence of law, or in absence of one or more good witnesses; when the body of any human being is found, and the circumstances of his death are unknown; or when the circumstances surrounding the death of any person are such as to lead to suspicion that he came to his death by unlawful means—it is the duty of any justice of the peace within the county to hold an inquest. The justice is authorized to call in a physician, and whenever a chemical analysis is necessary, an expert chemist. Witnesses may be subpoenaed, and their testimony is reduced to writing and certified to the district court. Any person whom the justice has reason to believe was concerned in the death of the deceased may be arrested upon warrant issued by the justice. Likewise, warrants may issue for the arrest of any persons whom the justice finds to have been implicated; and such persons

⁴For method of election and other duties of justices of peace, see p. 72.

may be committed to jail or required to execute a bail bond conditioned upon their appearance before the proper court to answer for the offense. (Code of Criminal Procedure, Title 13, Ch. 1.)

Notaries Public.—Although the notary public is mentioned as a county officer, he is not such in reality. He is appointed by the Governor and has no county duties to perform, his only connection with the county consisting in the fact that notaries are appointed for the counties—that is with a territorial jurisdiction corresponding to the county. His seal contains the words, “Notary Public, County of ———, Texas.” But that is the only point of contact between the notary and the county, except that the notary qualifies before and receives his commission from the county clerk, who must also take charge of the books, records, and public papers of the notary when he vacates his office.

CHAPTER IX

SUBDIVISIONS OF THE COUNTY

The smaller governmental units within the county are many in number and varied in character. They may, however, be conveniently divided into three general classes. The first class comprises those subdivisions which are purely administrative districts for election, judicial, or county purposes. The second class comprises those subdivisions which are districts with power of issuing bonds and levying taxes to meet principal and interest for the provision of local services and are more or less subject to control or supervision by county officers or employ the services of the regular county officials. The third class consists of incorporated villages, towns, and cities, whose functions and relations to the county are determined by laws especially applicable to them.

In the first class of smaller units for governmental purposes within the county belong the commissioners' precincts, road precincts, health districts, the justices' precincts, and election precincts.

Each county is divided into four commissioners' precincts. The original provision was made under the Constitution by the county courts in existing counties, and then after the establishment of the commissioners' courts, by those courts. In new counties, the division into commissioners' precincts is made by the commissioners' court of the county from which the new county is taken. Changes in the boundaries of the precincts are made by the commissioners' court. These commissioners' precincts are primarily election districts for the election of the commissioners. They are, however, at the same time units for the road administration of the county, the commissioners' court being authorized to appoint a road superintendent for each commissioners' precinct, and in counties having 40,000 inhabitants, the county commissioners are ex officio road commissioners of their respective precincts. The commissioners' court may

also create other road districts in the county with special road commissioners, not exceeding four altogether, in charge of each. Reference has already been made in enumerating the general powers of the commissioners' court to the fact that it may establish health districts of unincorporated towns or villages with a board of health of three persons appointed by the court.

For judicial purposes the county is divided into justices' precincts. By constitutional provision there must be not less than four and not more than eight in each county, the exact number to be determined, originally by the county courts, thereafter by the commissioners' court. When a new county is organized the division into justice precincts is made by the commissioners' court of the county from which the new county is in whole or in major part taken. In each such precinct there is elected by the qualified voters at each general election a justice of the peace for the term of two years. Vacancies in the office are filled until the the next general election by the commissioners' court. In any justices' precinct in which there is a city of eight thousand or more inhabitants, two justices of the peace are elected. The duties of the justice of the peace are almost wholly judicial, not administrative, and need therefore not be dwelt upon here. They have the lowest jurisdiction in civil and criminal cases. Their non-judicial duties comprise only such ministerial or non-discretionary functions as celebratng the rites of matrimony, etc. The justice of the peace is paid by means of fees for his services in amounts fixed by law.

The justice precinct is also the district for electing a constable. In each justice precinct there is elected one constable for two years at each general election. In precincts which do not contain a city with a population of eight thousand or more the constable may appoint one deputy; if there is a city of eight thousand inhabitants or more within the justice precinct, the constable for that precinct may appoint two deputies; and if the precinct contains a city of forty thousand or more, the constable may appoint

five deputies. Vacancies in the office of constable are filled by appointment by the commissioners' court until the next general election, and in unorganized counties, one constable is appointed by the commissioners' court of the county to which the unorganized county is attached for judicial purposes. A bond is required of every person elected or appointed to the position of constable. The duties of the constable comprise the execution and return of all processes, warrants, and precepts directed to him by any lawful officer, to attend all justices' courts held in his precinct, to preserve the peace and arrest offenders, and for the performance of these duties he may call to his aid any citizen of the county who may be convenient. Refusal to aid the constable when called upon may be punished as contempt by any justice of the peace in a sum not exceeding \$10.00 and may be punished criminally also. Constables are paid by fees for services as fixed by law.

The justice precinct is also the district for which public weighers may be appointed or elected upon petition of a majority of the qualified voters in those counties in which there is no city in which the Governor is authorized to appoint public weighers, that is, no city which receives annually large quantities of any one commodity.

Each county is divided by the commissioners' court into convenient election precincts, which may be different from the other precincts already mentioned. But no election precinct may be of two or more justice precincts. This is to say that the election precinct may coincide with the justice precinct, or constitute a subdivision of the same, but may not be larger than the justice precinct nor cut across the lines of the same. In cities, towns, and villages of more than ten thousand inhabitants the election precinct shall not contain more than three hundred and fifty voters, and the wards of the city shall constitute separate election precincts if they contain less than three hundred and fifty voters, as ascertained by the vote of the last preceding general city or town election.

The second class of county subdivisions, namely those which are districts, other than incorporated towns and cities, for local improvement services comprises a large number of areas, school districts, road districts, drainage districts, navigation districts, water preservation and control districts, water improvement districts, fresh water districts, and levee and overflow or improvement districts.

The most important of these corporate subdivisions of the county are the school districts. These school districts are of two kinds, common school districts, and independent school districts. Each county is subdivided into convenient common school districts, of not less than nine square miles in area. The subdivision of the county into these districts was until 1915 entrusted to the county commissioners' court, but is now imposed as a duty upon the county board of education. The power to create these districts is a continuing one and includes the power of redistricting by consolidation or subdivision of existing districts, except that the area of a school district having an outstanding bonded indebtedness may not be reduced until after such indebtedness has been discharged. These common school districts receive their share of the available State and county school fund, but in addition thereto may levy a special school tax, not to exceed \$1.00 on the \$100.00 valuation, for the further maintenance of public free schools and the erection of schoolhouses, provided a majority of the qualified property tax paying voters of the district, voting at an election to be held for the purpose, shall vote such tax. The common school districts may also vote in the same way to issue bonds for the erection of schoolhouses, provided that the annual tax for interest and sinking fund shall not exceed 50 cents on the \$100.00 valuation, and that the total of the interest and sinking fund tax plus the maintenance tax may not exceed \$1.00 on the \$100.00 valuation. These elections for the issuance of bonds and the voting of a special maintenance tax are ordered by the county judge upon petition of twenty or more of the qualified property tax paying voters of the district. The

taxes so voted are levied by the commissioners' court, assessed by the county assessor, collected by the county collector and by him paid over to the county depository. If the vote did not specify the amount of tax to be levied, the board of trustees of the district, together with the county superintendent, determine the rate to be levied and certify the same to the commissioners' court.

The officers of the common school districts are three trustees elected by the qualified voters for the term of two years, two elected in one year, and one the next. The trustees constitute a body corporate and have the management and control of the public schools, the power to employ and dismiss teachers, and to contract for the erection of school buildings. In the exercise of their functions the common school district trustees are subject to the supervision and control of higher officers, such as the county superintendent, commissioners' court, and State superintendent of public instruction. They must be able to read and write intelligently the English language, and read, comprehend, and interpret the laws of the State of Texas relating to the public school system. The county superintendent must judge whether the district trustees elected have the legal qualifications, and he must refuse to recognize a trustee who is not so qualified and make request for a suit for his removal. (Title 48, chap. 15.)

Besides the common school districts, there may be within each county independent school districts. These comprise two classes of independent districts, those formed out of towns or villages by incorporation for school purposes only, and those consisting of incorporated towns and cities. The creation of independent districts of the first type is occasioned by a petition to the county judge. Such an independent district may include towns or villages incorporated for municipal purposes, if the school district was incorporated before the municipal corporation or if the municipal corporation has not taken exclusive control over its schools. Upon the creation of an independent school district, the county must order an election for seven school trustees, who

shall constitute the school board of such district and serve without compensation. The trustees are elected for two years, one-half going out of office each year. The school board of the independent district adopts rules, regulations, and by-laws for the management and control of the schools, fills vacancies in the board until the next election, chooses its officers and necessary officers for the district such as assessor and collector of taxes if their taxes are separately assessed and collected, superintendent or principals and teachers. The independent school district has the power to levy special taxes and to issue bonds and to provide for the payment of interest and principal, similar to the powers of common school districts. In the management of the public schools of the independent districts, the district authorities are less subject to control and supervision by other officers, than are the authorities of the common school districts. Incorporated towns and villages that have assumed exclusive control over the public schools are independent school districts with school trustees, and municipal authorities attending only to the levy and collection of the school taxes and disposal of bonds. (Title 48, chaps. 16-18.)

Either common or independent school districts may be created out of parts of two counties, and are then known as county line districts with the same powers and functions as the school districts wholly within a single county, the manner of formation and the relation to the other county authorities being specially determined by law. (Arts. 2815a, 2815b, 1918 Sup.)

Road districts are areas for the purpose of issuing bonds for the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes. They may include either the whole county or any political subdivision or defined district of the county and are established by the commissioners' court upon the petition of fifty or a majority of the resident property tax paying voters in the district, and approved by a two-thirds majority vote of such electors at an election held for that purpose. The

amount of the bond issue may not exceed in amount one-fourth of the assessed valuation of the real property in such district. Road districts have no special officers of their own but are administered by the regular county officers. They are not liable in tort. (Title 18, chap. 2.)

Drainage districts may be created within the county upon petition of one-third or as many as twenty-five of the resident property tax payers whose land is affected, and approved by a two-thirds vote of the qualified property tax paying electors within the proposed district. Such districts, which may or may not include within their boundaries villages, towns, or municipal corporations or any portion thereof, may issue bonds not exceeding in amount one-fourth of the assessed value of the real property in the district and levy a tax to provide for the interest and sinking fund for such bonds. The levying of the tax is made the duty of the county commissioners and the assessment and collection of the same is entrusted to the county assessor and collector respectively. The drainage district may, however, elect three drainage trustees to look after the drainage interests of the districts, the trustees receiving \$2.50 for each day actually spent in discharge of their duties. Until the district by an election decides to elect the trustees, they are appointed by the commissioners' court; in either case the term is two years. Such drainage districts may also be established to include within their boundaries villages, towns, and municipal corporations or parts thereof. Drainage districts may sue and be sued. (Title 47, chap. 4.)

Navigation districts may be established for the improvement of rivers, bays, creeks, streams, and canals by a proceeding similar to that described for drainage districts, the territory within each district to lie in not more than two counties. In each case the commissioners' court must first pass upon the desirability of establishing such districts after receiving a petition to that effect and then submit the question to a vote of the qualified property tax paying voters of the district as to the creation of such a district and the issuance of bonds. In each such district established, there

must be appointed three navigation and canal commissioners from among the qualified real property tax payers in the district. Bonds may be issued in amounts authorized by a two-thirds vote of the qualified property tax-paying voters, not to exceed one-fourth of the assessed valuation of the real property within the district. The county tax assessor and collector act for the district, receiving their compensation from the same and the county treasurer cares for the moneys of the district, he also being paid for such services by the district. These districts may sue and be sued through the navigation and canal commissioners. (Title 96, chap. 1.)

Water control and preservation districts may be established in a county, a part of a county, or portions of two or more adjacent counties for the purpose of preserving the purity and irrigable quality of waters within the district. After approving a petition signed by twenty-five property tax-paying voters of the proposed district following a hearing on the petition, the commissioners' court sets the date for an election upon the question of establishing the district and issuing bonds. A two-thirds majority of those voting is necessary to carry the election. Following the election, the commissioners' court appoints a board of three directors for the district; or if the district embraces parts of two or more counties an election is held for five directors. Vacancies in the board are filled by appointment by the remaining members. The directors issue bonds up to the amount authorized at the election (not to exceed one-fourth of the assessed real property valuation) and have control over the management of the affairs of the district, including the appointment of a general manager, an engineer, and other employes, and the right to make all necessary contracts. The county tax assessor and tax collector function for the district; but the board of directors selects a depository without regard to the county depository. (Title 73, chap. 3.)

Water improvement districts¹ for irrigation purposes are formed as a result of an election held for that purpose after

¹Prior to 1913 these were called irrigation districts.

the commissioners' court has passed favorably upon a petition signed by fifty holders of title representing a majority in value of the lands affected. At the same election five directors are elected for a two-year term, the directors to have full charge of the management of the district; in districts containing twelve thousand acres or less in which at least 60 per cent of the land is owned by non-residents, the commissioners' court appoints the directors. When authorized by a two-thirds vote, the directors may issue bonds in any amount not exceeding one-fourth of the real property valuation of the district; or may enter into a contract with the United States under the provisions of the Federal Reclamation Act or any other act authorizing the use of a water supply. The district has its own tax assessor and collector and board of equalization appointed by the directors. (Title 73, chap. 2.)

For the purpose of conserving, transporting, and distributing fresh water, there may be created within the county, units known as fresh water supply districts. A petition to that effect signed by fifty or a majority of the land-owning voters of the proposed district warrants the calling of an election by the commissioners' court; and a majority vote of the resident tax-paying voters registering their opinion at the election is sufficient for the establishment of the district. At the same election, five supervisors are elected with full power to control and manage the affairs of the district. The district has the right upon a majority vote to issue bonds and to levy a maintenance tax, provided only that the question of repeal or reduction of the maintenance tax may come before the voters not oftener than once in five years. A tax assessor and collector is elected for a term of two years; and a board of equalization consisting of three members is appointed by the supervisors. The supervisors are required to hold regular meetings quarterly and may hold such special meetings as they choose. Fresh water supply districts are declared to be bodies politic and corporate and are given broad powers with special provision that specific grants shall not be held to be

limitations upon the general powers conferred. (Title 73, chap. 4.)

Finally, there may be created within a county, or several counties so-called improvement districts, which may or may not include in their boundaries villages, towns, or municipal corporations. The purpose of these districts is the building and maintenance of levees or other improvements on all rivers, creeks, and streams within the district to prevent overflows. Upon receipt of a petition signed by the owners of a majority of the acreage in the proposed district the commissioners' court conducts a hearing, and, if it finds that the creation of the district would be advisable, declares the district a body corporate. No action of the voters is necessary unless a bond issue is desired, in which case upon a petition signed by the owners of the majority of the acreage, the court calls an election upon the proposition.

The commissioners' court appoints three improvement commissioners to administer the affairs of the district, appoints an engineer, etc. The district may vote bonds if approved by the requisite two-thirds majority to an amount not in excess of one-fourth of the assessed valuation of the real property of the district. The assessment and collection of taxes and their preservation are in the hands of the regular county officers, as also the handling of the bonds. (Title 83, chap. 2.)

Section 59 of Article XVI of the Constitution, adopted in 1917, authorizes the Legislature to provide for the creation of conservation and reclamation districts with such powers as the Legislature may grant. The provisions of Section 52 of Article III limiting the bond issue of districts to one-fourth of the real property valuation of the district, and requiring a two-thirds majority to authorize the issuance of bonds, are not applicable to such districts. Acting under authority of the first-named section, the Legislature has authorized the creation of conservation and reclamation districts in the same manner that water improvement districts, or levee improvement districts might be created; and

has further authorized the conversion of the last-named districts into conservation and reclamation districts—in either case with authority to “incur indebtedness and levy taxes to fully carry out each and all of the purposes of its organization and for the payment of its obligations and the maintenance and operation of said district.” Apparently such districts may by majority vote exercise an unlimited taxing and bonding power.

There is nothing to prevent any given portion of a county from being included in special districts of each of these several kinds, the only limitation being that the same lands shall not be included within two or more districts of the same kind.

The third group of subdivisions within the county are the incorporated villages, towns, and cities. The powers and functions of these public corporations vary greatly among the different classes of such corporations, but the chief distinction between them as a class and all the other subdivisions of the county so far considered is to be found in the fact that while the other subdivisions are created for special purposes, and usually only a single purpose, this class of corporations possesses in addition to general corporate powers an ordinance power covering a large variety of matters. It is not desirable in such a study as this to go into detail with regard to these powers and functions because they vary greatly with the different classes of municipal corporations and their detailed examination belongs in a study of town and city government. Generally speaking, however, incorporated villages, towns, and cities are geographical subdivisions of the county only, and not in any sense subordinate subdivisions. That is, although the jurisdiction of the county as regards its functions extends over the areas of incorporated places within its boundaries, these incorporated places have the power of performing these same functions for themselves, and others in addition. So the county assesses and collects taxes on property within the corporate limits of these municipalities, and they assess and collect taxes for their own purposes within their limits. The

county looks after the health of the entire county, and these corporations can regulate public health within their limits. The county looks after the health of the entire county, and these corporations can regulate public health within their limits. The county is charged with looking after the public roads and bridges, and the care for the poor, the municipalities have power to pave the streets and to look after the poor of the city. The sheriff and constables and their deputies are charged with the duty of preserving the peace and arresting offenders in the county and justice precincts, and within the incorporated places the city police authorities have a similar power. Speaking generally, therefore, the governing authorities of incorporated places and the county officers have concurrent jurisdiction over the territory included within those places, the powers of taxation, legislation, and administration of the incorporated communities being more extensive than those of the county. The laws provide expressly for coöperation between the counties and incorporated places with regard to certain matters, as for instance the construction of bridges, the safe-guarding of the public health, etc., but for the most part, no legal provision is made for the exact definition of the relations between the larger and the smaller units, and a duplication of functions and conflict of responsibility and authority are not guarded against. The matter of the relation between the county and municipal corporations within the county will be taken up in the consideration of the defects of the present county system and the suggestions for reorganization.

CHAPTER X

STATE CONTROL OVER COUNTIES

The county being very largely a unit for the administration of State functions it is natural to expect that there should be some measure of central control. Such control over Texas counties is of three general kinds, legislative, judicial, and administrative, as indicated by the branches of the central government that exercise it.

The Legislature of the State having all powers of government that are not expressly denied or limited by the Constitution or distributed to other governmental organs has originally absolute and complete control over the governmental subdivisions in the State, so far as not restricted by the Constitution. In the earliest Constitution as has been seen there was comparatively little said about county government and the Legislature had virtually a free hand, though the power of creating, altering and abolishing counties was from the outset pretty strictly defined by the Constitution. Gradually, however, more and more provisions concerning counties were included in the Constitution itself, and to that extent the freedom of the Legislature in dealing with county government has been increasingly limited. This has been much more marked in the case of counties than in the case of cities, for even today the constitutional provisions governing cities do not go into such detail regarding organization and powers as in the case of counties, though the recent home rule amendment enlarged the sphere of local freedom from the Legislature in the adoption of the form of city government.

Among the more important constitutional provisions relating to counties which have the effect of circumscribing the power of the Legislature to deal with counties as it seems fit may be mentioned the following. The manner of creating new counties, their area, and the location of their county seats, as well as the proceedings for changing the county

seat in existing counties, is described in considerable detail in the Constitution, the Legislature being charged with the duty of passing the necessary legislation for executing the constitutional provisions. The division of the county into commissioners' and justices' precincts is also specified in the Constitution. Secondly, most of the county officers are required in the Constitution, such as the county judge, the clerk, the sheriff, the county attorney, the justices of the peace and the constables on the judicial side, and the county commissioners, the assessor and the collector of taxes, the treasurer, and the surveyor on the administrative side. The qualifications, terms of office, method of election and removal of all these officers are fixed by the Constitution, as are also the qualifications of the voters, the Legislature being limited to prescribing their duties and remuneration. The Legislature has the power of providing additional officers, and the other county officers discussed hereinbefore have been established by statute and are of course capable of being abolished in the same way. The Constitution requires, however, that all officers be elected or appointed for a period of two years unless otherwise specified in the Constitution.

Not only are the officers of the county specified in considerable detail in the Constitution, but the powers of the county are also the subject of constitutional provision. So the jurisdiction and the term of the county courts are prescribed in the Constitution, though the Legislature may alter the former. Counties and subdivisions of counties are constitutionally authorized to issue bonds, and levy and collect taxes for the same, under prescribed conditions, for the improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof, or irrigation for the construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purposes of irrigation, drainage or navigation, and for the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes. This grant was not, however, self executing but required legislative action. Coast counties are also expressly authorized to issue bonds under pre-

scribed conditions for the construction of sea walls, breakwaters, and sanitary purposes, and to levy and collect taxes for the same. The Constitution also contains a directory provision to the effect that the construction of jails, courthouses, and bridges, and the establishment of county poorhouses and farms and the laying out, construction, and repairing of county roads shall be provided for by general laws.

There are other constitutional provisions with regard to the taxing power of counties and the power to incur indebtedness which are negative in that they prescribe the maximum amounts beyond which the Legislature may not authorize the counties to go. These provisions are of course limitations on the freedom of the counties rather than on the freedom of the Legislature, but illustrate still further the extent to which central control over counties has been taken out of the hands of the Legislature. Other constitutional provisions of a like negative nature refer to the prohibition on authorizing counties to loan their credit to individuals or corporations, to the administration of county school lands and funds, etc. An express provision of the Constitution prohibits the Legislature to pass any local or special law regulating the affairs of counties, except as otherwise provided in the Constitution. This limitation seems not to be very effective for on the one hand a considerable number of county affairs are expressly exempted from it, such as the formation of school districts, local road laws, and local fence laws, and laws relating to the jurisdiction of county courts or the creation of special courts, and on the other hand laws that are applicable to more than one county, even though applicable to a small number of counties only are not considered local or special laws in violation of this provision.

Within these various constitutional limitations imposed upon the Legislature the affairs of counties are regulated in great detail by legislation, and under the doctrine of strict construction of powers and the practice of specific instead of general grants of power, every new undertaking of the

county is dependent upon legislative action. The method of assessing and collecting taxes for instance is described in great detail by statute, leaving virtually no discretion under the law of the assessors and collectors. Perhaps the greatest detail in legislative control over county activities is found in the field of public education. The certification of teachers, their salaries, and duties, the subjects to be taught, the length of the school year, the manner of taking the scholastic census are all prescribed at considerable length. The manner of laying out, constructing, and repairing the county roads and bridges is also specified in the law to a large extent. In fact the principal activity of the county with regard to which the law does not go into great detail is in the care of the poor and the indigent sick of the county.

Judicial control over the county is exercised chiefly in the appeals provided from decisions of the county court to the higher courts, and in the general jurisdiction of the higher courts to pass upon the legality of acts of county officers. Furthermore, all county officers are removable by the district court judges for incompetency, official misconduct, or drunkenness.

Administrative control by the State over county affairs is the least developed of the three kinds of control under consideration. It is mostly highly developed in the field educational authorities, the State Board of Education, the State Textbook Commission, the State Board of Examiners for Teachers, and the State Superintendent of Public Instruction. The State Board of Education consists of the Governor as ex officio president, the Secretary of State, and the Comptroller, with the State Superintendent of Public Instruction as ex officio secretary. The functions of this board are to purchase and distribute throughout the state without cost to the pupils textbooks for use in the schools, to make the apportionment of the State available school fund to the counties and independent districts, and make special aid appropriations to individual high schools and rural schools, on recommendation of the State.

superintendent. It also hears appeals from decisions of the State superintendent, prescribes the questions for use in examinations for teachers' certificates, invests the permanent public free school funds of the State, and creates independent school districts for eleemosynary institutions. The State Textbook Commission consisting of the Governor as chairman, the State Superintendent of Public Instruction as secretary, and seven other members appointed by the Governor from a list submitted to him, selects and adopts the textbooks for use in the public schools for a period not to exceed six years. The State Board of Examiners for Teachers consists of not less than three members appointed by the State superintendent, to examine the papers of applicants for teachers' certificates forwarded to them by the county boards of examiners, and to report the grades to the State superintendent.

The most important of the State educational administrative authorities is the State Superintendent of Public Instruction. He is elected for two years by the voters of the State. In addition to serving on the boards mentioned above he has charge of the administration of school laws and a general superintendency of the business relating to the public schools of the State. He hears and determines appeals from the ruling of subordinate school officers and prescribes suitable forms for reports required of subordinate school officers and teachers and blanks for their guidance in transacting official business and conducting public schools, and from time to time prepares and transmits to them such instructions as he may deem necessary for the faithful and efficient execution of the school laws. He examines and approves all accounts against the State school funds. The purchase and distribution of free textbooks is under his management, subject to the approval of the State Board of Education. He is to inform himself concerning the educational progress of the different parts of the State, visit the different sections of the State and address teachers' institutes, associations, summer normals, and other

educational gatherings, to instruct teachers and arouse educational sentiment. He attests the certificate of apportionment of the school fund, investigates the scholastic census and passes on the census returns, prescribes regulations for summer normals, publishes the school laws, and performs a number of other specific functions.

The field of finance administration presents another branch of activity by county officers which is supervised by State administrative officers, though to a less extent than is true in the field of public education. Inasmuch as county assessors and collectors of taxes assess and collect the State taxes as well as the county taxes, they are subjected to a certain State control in that regard. The chief State administrative authority for this purpose is the Comptroller of Public Accounts, who is elected for two years by the qualified voters of the State. He is charged with the duty of requiring statements and settlement from all persons who receive money belonging to the State, and for that purpose he keeps a special ledger to keep the accounts of tax collectors. He registers all county bonds and bonds for local improvement purposes. He also certifies to the county assessor of each county the rate of taxes for State purposes and for public school purposes as fixed by the State Board to Calculate the Tax Rate. This board consists of the Governor, the Comptroller, and the Treasurer of the State. It is made the duty of the tax assessor of each county to make an annual certified statement to the comptroller showing the total amount of property in his county subject to taxation, such statements being the basis on which the annual tax rate is calculated. It is to be noted, however, that no State control or supervision is provided for checking up these statements or for equalizing the valuation as between different counties.

Another branch of activities of county officers over which the State exercises some administrative control is in the field of public health. Under the law the county health officer is charged with the duty of meeting the requirements, rules, and regulations of the State Board of Health. This board consists of seven members appointed by the Governor,

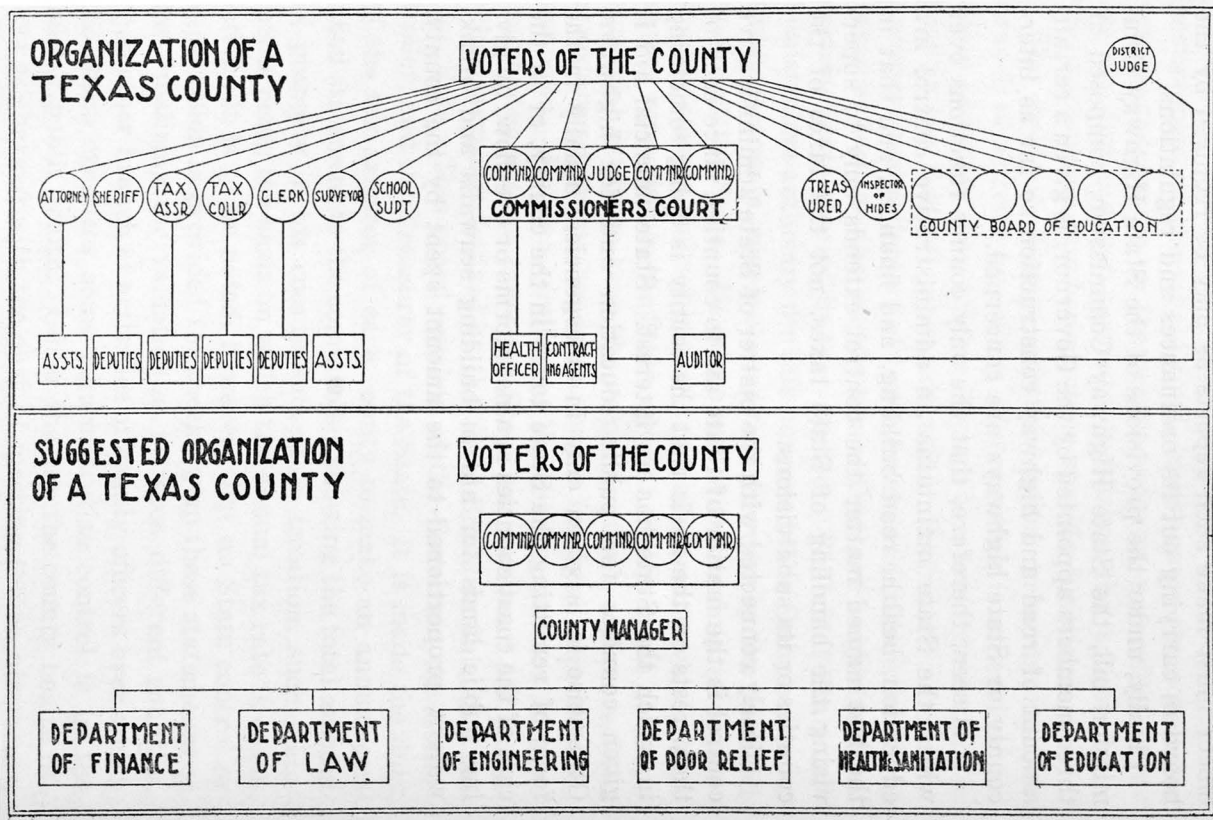
with the State health officer as president. The county health officer must make such reports as may be required by the board in carrying out its ordinances and regulations.

Finally, under the provisions of the State Highway Commission bill, the State Highway Commission, composed of three members appointed by the Governor, is given a certain amount of road and highway construction so far as inter-county or State highways are concerned.

It is seen, therefore, that the only county functions over which the State maintains an administrative control are education, health, road building, and finances, and that in the last named matter the control extends only to supervising the handling of State taxes, not the taxes of the counties or its subdivisions.

Closely connected with the matter of State administrative control is the matter of State aid to counties, since each of them rests on the basis that the county is doing something in which the State has an interest. State financial aid is given counties for public education and for highways. Otherwise it is given only in emergencies, usually in the form of remitting the State taxes in the county, or in the case of the coast counties against storms or overflow, by giving public lands for aid in building seawalls and breakwaters, proportioned to the amount spent by the county.

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PART II. CRITICISM

It is generally recognized today that since the government of cities has come to receive such widespread attention and study in the United States with a consequent marked improvement in the character of city government, county government is the most unsatisfactory specimen of governmental units to be found in this country. County government has been almost uniformly bad in the United States from a very early time, probably quite as bad as the very worst of our city governments. Because the activities are less extensive and little known, corruption, inefficiency, and wastefulness in county government were less exposed to the public eye than in the case of the National government, the states, or the cities. In recent times attention is beginning to be devoted to the problems of county government, and the general outlook in the United States is rather discouraging. An examination into the general scheme of county government, which, though varying in many respects in different parts of the country and in the different states, presents certain general points of similarity, shows certain fundamental defects which, if not the sole cause of the general failure of county government, would seem to be sufficient in themselves to prevent the successful carrying on of county business. The county system in Texas, briefly described in the first part of this monograph, modeled as it is on the county system of the states from which the early settlers from the United States came, shows these same defects. An attempt will be made herein to point out these defects and to suggest their remedies. In an attempt of this kind it is of course difficult, if not impossible, to decide the order of importance of the objections to be made, particularly as many of them are so closely related to each other. It is, therefore, the totality rather than the sequence of objections which is important.

In the first place, it may be asserted that the system of county government in Texas suffers from too great rigidity by reason of the detailed provisions of the Constitution. There is perhaps no State in the Union in which greater variations exist in the population, area, and economic conditions of counties than in Texas. It is natural to assume that such variations might very well demand corresponding variations in the legal provisions governing county government. Yet we find the constitution requiring for each county, no matter what its size, a county judge, four county commissioners, not less than four justices of the peace, a county clerk, a sheriff, a county attorney, a county treasurer, a county surveyor, and a county assessor. This makes a minimum of fifteen county officers required by the Constitution for every county. Now, even as late as the census of 1910, there were more than forty counties in the State with a population less than 2,500, and of these, nineteen had not even a thousand inhabitants. It can readily be seen that the minimum county machinery provided by the Constitution is too cumbersome for such thinly populated areas. Some variations, it is true, are allowed by the Constitution when the county exceeds certain figures in population, but not to a very considerable extent. Of course, the same objection can be urged against legislative enactments that deal with all counties alike, irrespective of local conditions, but such a fault can be more readily corrected, whereas, constitutional provisions are changed only with great difficulty.

These considerations bring up at the outset the question of home rule for counties, at least so far as their organization is concerned. It has been found advisable in Texas and a dozen other states of the Union to give to cities local freedom in the matter of choosing their machinery of government. Exactly the same considerations apply in favor of allowing counties a similar freedom. If differences in cities demand that each city be allowed to frame its own government, so differences in counties require a like power there. It is clear, as will appear more and more in this discussion, that the present form of county government in

Texas is unsatisfactory. It is not so clear just what form would be the best, or that any one form would be the best for all counties. Experimentation by means of laws applying to all counties is practically impossible, and undesirable if possible. But experimentation by each county for itself is not only possible if local powers of framing the county government are granted, but is desirable. The power conferred upon Texas cities to frame their own charters has done more to stimulate interest among the city dwellers in the problems of their city, than anything else could possibly have done, and that has been the experience elsewhere. The same cause would unquestionably have the same effect in the case of county government. The proposal to give counties the right to frame charters of government for themselves has already been put into effect in California with most encouraging results, and the movement for a similar system is growing in other states. A little further on a plan for county organization will be suggested which is believed to promise increased efficiency in county government. At this point, however, merely the desirability of county home rule is being emphasized.

Another side of home rule relates to the functions of the local area, as distinguished from its manner of organization. It is well to point out at this juncture that counties should have larger powers for entering upon undertakings that seem to the inhabitants of the county as desirable and that the counties should not be dependent upon getting those powers separately from the Legislature. The Constitution should confer upon counties broad powers of local government, subject only to control by the Legislature when required in the interests of the State.

It may be objected at once to the above proposal for county home rule that the organization and functions of the county court and its officers cannot be left to the decision of each county without upsetting the entire judicial system of the State. This objection is entirely sound, but is adequately met by pointing out another fundamental defect in the present system of county administration in

this State, and suggesting its remedy. County judge, county attorney, county clerk, and sheriff, as well as constables and justices of the peace, although called county officers and locally elected, are, so far as their judicial functions go, in no sense county officers but State officers. Now the folly of entrusting the enforcement of State laws to locally elected officers without very strict State supervision and control over them, is theoretically self-evident and has in practice demonstrated its reality. To entrust a locally elected county attorney with the prosecution of offenders against State laws that do not meet with local approval is simply to give the locality, or rather the controlling political interests in a locality a veto on State legislation so far as that locality is concerned. The same situation applies to the subordinate judicial officers, such as justices of the peace, constables, and sheriff, and to the county judge himself.

That being the case, these judicial officers should not be locally elected at all, but appointed by a central authority. Not being county officers, their constitutional powers would not fall within the jurisdiction of the local charter-making power. Consequently, they should be stripped of their local powers, which should be entrusted to truly local officers. This separation of judicial and administrative functions would be desirable in and of itself, particularly in the case of the county judge. The qualities needed for a good judge are not by any means those needed for a good administrative officer, and are rarely found in one and the same person. If you add to these two qualifications demanded of a really successful county judge in Texas, a third requirement which is prerequisite to getting the office, namely, being a good politician, since the office is elective, it is not surprising that county judges as a rule possess only the last named and only indispensable qualification.

There are other county officers who also perform functions directly for the State, notably the tax assessors and collectors, who assess and collect the State general property tax as well as the county taxes. These dual functions are,

however, not incompatible, as are those entrusted to the county judge, but are identical, and there is therefore no objection to having the county assessors and collectors act for the State also. On the contrary, considerations of economy point to that arrangement as a very desirable one. But such an arrangement need not conflict with the proposal for local charter making power, since county tax officials would be required in any case, and whatever officials are provided for that purpose could simply be charged by law with the assessment and collection of State taxes as well. It would be desirable, however, to provide for an effective system of State supervision over them, to insure that the State function performed by them is properly performed.

Aside from such direct State functions as the assessment and collection of taxes, there are a number of so-called county functions which are of manifest concern to the State also. Among these may be mentioned the preservation of order, the protection of the public health, provision for public education, etc. The State could very well, and, indeed, should in fact, insist on minimum standards of accomplishment in these fields, since the State as a whole suffers from their neglect. But this also could be accomplished without infringing on the freedom of the county to choose its own machinery for accomplishing them, or with its freedom to establish higher standards or to engage in new activities, not demanded by the State. Even the matter of county roads is of concern to the rest of the State as well as the county, a fact which has been accorded recognition in the recent State Highway Commission law.

This raises the question of State aid for these matters of joint concern, which is now limited to educational affairs, road building, and emergencies, but which should be extended to all activities in which the State has a direct interest and over which it would exercise administrative control.

The first need, therefore, of Texas counties is that they be given larger freedom both in the matter of organization and in the matter of powers. This is perhaps even more

desirable in the case of counties than in the case of cities, for counties are not natural units of government, but artificial ones. City dwellers naturally have a certain community of interests and a certain local sentiment by reason of intimate contact with each other. The city is more or less sharply distinguished from the surrounding rural country by tangible differences. Not so with the county. County lines are based on no natural geographical divisions, and nothing but invisible lines distinguish one county from another. Yet the inhabitants of a county are expected to act together as a community in the choice of their officers and in the county undertakings. Anything, therefore, which would tend to foster a feeling of community of interests and political homogeneity would prove a distinct advantage for the development of a community sentiment and a local pride. County home rule as outlined above would, it seems, unquestionably tend to stimulate such local interest.

There are a number of other specific objections to the county system as established by the Constitution and laws in Texas, which, while still further elucidating the need for local home rule, also call for remedial legislation in case the system of county home rule is not established. Chief among these may be mentioned the multiplicity of elective offices. Attention has already been called to the indefensibility of having the judicial officers in the county, who are charged with the application of State laws, subject to the control of the local electorate. In another way, the process of selecting administrative officers is just as objectionable. No principle of government has received more general acceptance by students of governmental problems than the principle of the short ballot, as it is called. In essence this principle requires that only policy-determining officers should be elected by the people, and that these representatives should select the administrative officers who are supposed to carry out the policies determined upon. All administrative offices should be filled by men with particular qualifications for the work to be performed. The only way

to select such men is by appointment, not by popular election. To choose them by popular election has the further disadvantage of unnecessarily increasing the burden thrown upon the voter. The old idea that the more public officers there are elected by the people the greater is the control of the people over the government, has been exploded by nearly a century of sad experience. The unnecessary multiplication of elective officers imposes a duty upon the voter which he simply cannot properly perform, human limitations being what they are. Instead of exercising independent, intelligent judgment at the polls when confronted with an overwhelming list of officers to be elected, the voter must needs act wholly in the dark, guided by blind chance or else be guided by the advice of party or factional leaders who use the bewilderment of the voter to promote their own advantage. Consequently, the voters' action at the polls is not only in no true sense his own conscious choice, but is manipulated by influences that may actually be and frequently are inimical to his real interests. The only way to give the voter a really effective control over the government is to reduce the number of officers he has to elect to a minimum, and to limit the officers so chosen to the real policy-determining officers.

Some idea of the burden that is thrown upon the voter in Texas counties at the regular elections every two years may be gathered from a partial list of the officers he is called upon to choose. In the first place, there is the National Congressman for his district. Then there is a long list of State officers, including the Governor; Lieutenant Governor; Commissioner of Agriculture; Attorney General; Comptroller of Public Accounts; Commissioner of the General Land Office; Railroad Commissioner; Superintendent Public Instruction; Treasurer; judges of the Supreme Court, Court of Criminal Appeals, and Courts of Civil Appeals; representative in the Legislature; State Senator. To this already formidable list must be added the elective county officers, including county judge, county attorney, sheriff, surveyor, treasurer, commissioner, assessor, collector, clerk

of the county court, superintendent of public instruction, county school trustees, justices of the peace, and constables. Finally, may be mentioned the local officers of the subdivisions of the county, which vary in number but are usually also chosen at the general election. To this array of thirty or more officers elected every two years must further be added officers not chosen every two years, but selected at the time of general elections when they are selected, such as presidential electors, United States senator, district judges and others. It is clear that the superhuman is expected of the very human voters, when they are expected to cast an intelligent ballot on all of these officers at one time. To reduce the number of county officers so chosen would prove beneficial not only with regard to the remaining county officers to be chosen, but for the entire range of electoral activity. From the point of view of the county it would be a decided advantage if county elections, like city elections, were held at a different time from the State elections. Then if the only county officers chosen by popular election were the county commissioners, as will be suggested in the proposal for county reorganization a little later on, and the powers of the county were enlarged, as has been outlined above, the voter of the county could concentrate his attention and his scrutiny on a few really important officers.

A third serious defect of the present county government in Texas is the fee system of paying public officers. Practically all of the county officers are paid by fees in Texas. The fee system, necessary as it may have been in the pioneer days of statehood, when there was little money available for salaries and when the duties of public office usually demanded but a small portion of the official's time, has been so often attacked and is so generally recognized as pernicious that were it not for the organized opposition of the incumbents who profit by the system, it would long since have been

discarded in this State as it has in a number of others.¹ To put public officials on a salary basis makes both for efficiency and economy and eliminates a strong temptation to engage in corrupt acts. If the general public, which unconsciously, perhaps, but none the less really suffers by the fee system, could but be awakened to the evils thereof, public opinion would soon sweep it away against the organized opposition of those who profit thereby at the public expense. It is to be hoped that Texas will soon take her place with the progressive states which have eliminated that particular sore from the system of county government.

Another need of county government in Texas is a system of county police. The sheriff and the constables are, it is true, supposed to be guardians of the peace. But the sheriff has so many other functions to perform that his police activities are limited to organizing the pursuit of criminals frequently many hours after the crime has been committed and the protective functions of the constables are a joke. What is needed for an adequate police protection in the open country is a system of mounted county police who can really patrol the area of the county. In the border counties of Texas the Texas State rangers perform a function of this kind which is desirable for all counties. There is no reason why the county itself should not provide the system of police, as do the cities, though the State should contribute a portion of the expense of maintaining it. A further specific objection to the present system of county government is the multitude of subordinate divisions provided for by law. Many of these subdivisions have their own special officers, and have an independent borrowing and taxing power, thus needlessly multiplying the governmental areas and the taxing districts. With the exception of the incorporated villages, towns, and cities which have their

¹The Thirty-third Legislature in 1913 passed a joint resolution for a constitutional amendment putting all State, district, county, and precinct officers on a salary basis. It failed to receive a majority vote at the popular election.

own local governmental problems and functions, there is no reason why a single set of county officials should not serve for the entire county. Most of the subdivisions of the county mentioned in an earlier part of the monograph are improvement districts for the purpose of constructing and maintaining public improvements which are of particular benefit to parts of a county. These improvements could very well be administered through the county government by means of the benefit assessment plan which is followed in the cities. When a certain street is to be paved in a city, or a certain area is to be served with sewerage, no special governmental authority is created. The improvements are provided under the supervision of the regular city governing authorities. The same plan could be adopted in the counties to advantage.

This suggests another problem that has not been met in Texas county government, and that is the proper relation between the county and the incorporated communities that lie within it. These latter are constituted for the performance of many of the same functions as are entrusted to the counties as a whole, and yet the relative jurisdiction of the two areas with regard to these activities has not been sufficiently defined. In such matters as the arrest of offenders, preserving the public health, the care of the poor, etc., there is a concurrent jurisdiction which may become a source of conflict, or, what is more likely, the source of gaps in governmental activity which are not filled because each unit leaves it to the other. This last situation is well illustrated with regard to the care of the poor. The county, although charged by law with the duty of caring for the poor of the county, quite commonly considers it to be the duty of the city to look after its poor, even though the city's destitute may wander in from the surrounding county in search of work and become a public charge there. Conflicts of jurisdiction between city police and county constables and sheriff in the preservation of order are not eliminated and may become acute in this State as they

have in other states. On the public health side the law provides the possibility of coöperation between county and city, but does not make it compulsory or determine the way in which it may be effectively carried out.

It is in this connection that the importance of another problem of county government is emphasized, and that is the position of the larger cities in the county. In the case of all the larger cities of Texas—that is, the five cities having more than 50,000 inhabitants according to the 1920 census, the city contains much more than one-half of the population of the county, a percentage which has been steadily increasing and has increased considerably since the last United States census. The ratio between the taxable values of the city and those of the county as a whole is even greater. Now this means, in the first place, that the inhabitants of the city pay the greater share of the general county tax, which is, however, spent primarily for the benefit of the rural population of the county, since the functions of the county, paid for out of the general fund, are attended to within the city by the city government and paid for by city taxes. Among such functions may be mentioned police protection, public health service, public education, road maintenance, poor relief, etc. It means, also, the unnecessary duplication of governmental machinery in the city. There is no reason why a city of 50,000 people should not perform, through its officers, all of the governmental functions for which the county is created. Every such city should be constituted a county for itself, therefore, and the functions imposed by law on the county officers should be exercised in and for the city by the regular city officers. This would eliminate duplication and waste and relieve the city taxpayer of an unfair burden imposed upon him by the present relation. On the other hand, provision must be made, either by increasing the tax rate or preferably an extension of State aid, for the replenishment of the county revenues, which would be sadly diminished by the proposed separation of the city from the county. The plan of constituting the larger cities as counties in

themselves is regularly followed in England and is found in an increasing number of cases in this country, though still comparatively rare. It is being widely endorsed, however, for further extension.

Having now considered some of the principal weaknesses in the present scheme of county organization in Texas, it may be worth while to suggest a plan of organization which, it is believed could profitably supersede the present plan, either by constitutional and legislative enactment, or, better still, by the free choice of the counties themselves acting under the necessary home rule powers. The county being properly a unit of local government for the satisfaction of local needs, there seems to be no reason why the general scheme of government which is receiving widespread approval for cities should not be applied in the case of counties. The underlying principle of the commission-manager plan of government, which is the concentration of all local powers in the hands of a single elective body, and the entrusting of the active administration to a chief administrative officer appointed by and responsible to this body, is just as applicable to the county as to the city. There should, therefore, be an elective county commission of from five to nine members chosen for overlapping terms. The constitutional limitation of offices to two years is just as objectionable in the case of counties as in the case of cities, and should be removed in both cases. With a term of four years for county commissioners, it would be possible to reduce the burden of the voter to the point of having not more than three or five county officers to select every two years. This would enable the county voter to exercise a really intelligent choice and to watch the activities of the county governing body with care, thus securing complete responsibility. This governing body would be a legislative and supervisory body purely, and its functions would demand so little time that capable but busy men could be secured to serve as county commissioners without pay. The administrative work of the county would be entrusted to a county manager, appointed by the commission on the basis of administrative

ability. He would have the responsibility for the efficient execution of the functions determined upon by the commissioners. He would be assisted by subordinates chosen by him on the basis of proved fitness for directing the work of the various departments. The number of such assistants would, of course, vary with the size of the county and the extent of the functions undertaken. There would ordinarily be required a man to look after the county finances, another to look after legal affairs, another to look after police and poor relief, another to look after public health, another to direct the public works of the county, particularly the roads, and another to direct the educational work of the county. Below these directors, who would be responsible to the county manager, would come the necessary staff of subordinate officers and employees, all appointed on a merit basis and insured a position during satisfactory service. In this way there would be substituted for the present complicated, inefficient, irresponsible county government, a scheme of administration which, while insuring complete popular control, would be modeled along approved lines of business organization.

A graphic comparison of the present scheme of county organization in this State and the proposed plan of reorganization will be seen from the two charts found on page 90.

There remains merely a word to be said about the relation of the county to the State under the proposed plan of reorganization. As has been suggested, county officers could very properly be used to perform State functions either directly or indirectly, as, for instance, in the assessment and collection of State taxes and the enforcement of State laws, respectively. In that case, it would be necessary to give the State some means of control, which could be done by a wide power of supervision, the requirement of reports, and as a last resort the power of removal of officers for neglect of duty with regard to these functions. On the other hand, the performance by the county of these State

functions should entitle it to financial aid from the State for whose benefit these functions are performed. This principal of State aid is already accepted in this State with regard to public education, and quite recently with regard to the building of public roads, but it should be extended to include other county functions that are of statewide concern, such as police protection, poor relief, and public health.

APPENDIX I

PROVISIONS OF THE TEXAS CONSTITUTION AFFECTING DIRECTLY OR INDIRECTLY COUNTY GOVERNMENT

Note.—The edition followed is that issued by the Secretary of State, with later amendments incorporated.

ARTICLE III

SEC. 25. The State shall be divided into senatorial districts of contiguous territory according to the number of qualified electors, as nearly as may be, and each district shall be entitled to elect one Senator, and no single county shall be entitled to more than one Senator.

SEC. 26. The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; *provided*, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate representative district, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a representative district with any other contiguous county or counties.

SEC. 52. The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State, to lend its credit or to grant public money or thing of value, in aid of or to any individual, association or corporation whatsoever; or to become a stockholder in such corporation, association, or company; *provided*, however, that under legislative provision, any county, any political subdivision of a county, any number of adjoining counties, or any political subdivision of the State, or any defined district now or hereafter to be described and defined within the State of Texas, and which may or may not include towns, villages, or municipal corporations, upon a vote of a two-thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition

to all other debts, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution, and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the Legislature may authorize, and in such manner as they may authorize the same, for the following purposes, to wit:

(a) The improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof or irrigation thereof, or in aid of such purposes.

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals, and waterways for the purposes of irrigation, drainage or navigation, or in aid thereof.

(c) The construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes, or in aid thereof.

SEC. 53. The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part, nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract made without authority of law.

SEC. 55. The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any incorporation or individual to this State, or to any county, or other municipal corporation therein.

SEC. 56. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing—

Regulating the affairs of counties, cities, towns, wards, or school districts;

Locating or changing county seats;

Creating offices or prescribing the powers and duties of officers in counties, cities, towns, election, or school districts.

Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability.

ARTICLE V

SEC. 7. The State shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased

or diminished by law. . . . He [the district judge] shall hold the regular term of his court at the county seat of each county in his district at least twice in each year, in such manner as may be prescribed by law. The Legislature shall have power by general or special laws to authorize the holding of more than two terms in any county for the dispatch of business.

SEC. 8. The district court shall have appellate jurisdiction and general control in probate matters over the county court established in each county for appointing guardians, granting letters testamentary and of administration, probating wills, for settling the accounts of executors, administrators, and guardians, and for the transaction of all business appertaining to estates; and original jurisdiction and general control over executors, administrators, guardians, and minors, under such regulations as may be prescribed by law. The district court shall have appellate jurisdiction and general supervisory control over the county commissioners' court, with such exceptions and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever for which a remedy or jurisdiction is not provided by law or this Constitution, and such other jurisdiction, original and appellate, as may be provided by law.

SEC. 9. There shall be a clerk for the district court of each county, who shall be elected by the qualified voters for the State and county officers, and who shall hold his office for two years, subject to removal by information, or by indictment of a grand jury, and conviction by a petit jury. In case of vacancy the judge of a district court shall have the power to appoint a clerk, who shall hold until the office can be filled by election.

SEC. 15. There shall be established in each county in this State a county court, which shall be a court of record; and there shall be elected in each county by the qualified voters a county judge, who shall be well informed in the laws of the State, shall be a conservator of the peace, and shall hold his office for two years, and until his successor shall be elected and qualified. He shall receive as compensation for his services such fees and perquisites as may be prescribed by law.

SEC. 16. The county court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justices' court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed \$200.00; and they shall have exclusive jurisdiction in all civil cases when the matter in controversy shall exceed in value \$200.00 and not exceed \$500.00, exclusive of interest; and concurrent jurisdiction with the district court when the matter in controversy shall exceed \$500.00 and not exceed \$1,000.00, exclusive of interest. but shall not have

jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases, civil and criminal, of which justices' courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed \$20.00, exclusive of costs, under such regulations as may be prescribed by law. In all appeals from justices' courts there shall be a trial *de novo* in the county court, and appeals may be prosecuted from the final judgment rendered in such cases by the county court, as well as all cases, civil and criminal, of which the county court has exclusive or concurrent or original jurisdiction of civil appeals in civil cases to the Court of Civil Appeals, and in such criminal cases to the Court of Criminal Appeals, with such exceptions and under such regulations as may be prescribed by law.

The county court shall have the general jurisdiction of a probate court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons *non compos mentis*, and common drunkards; grant letters testamentary and of administration; settle accounts of executors; transact all business appertaining to estates of deceased persons, minors, idiots, lunatics, persons *non compos mentis*, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons; and to apprentice minors as provided by law; and the county court or judge thereof shall have power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of *habeas corpus* in cases where the offense charged is within the jurisdiction of the county court, or any other court or tribunal inferior to said court. The county court shall not have criminal jurisdiction in any county where there is a criminal district court unless expressly conferred by law; and in such counties appeals from justices' courts and other inferior courts and tribunals in criminal cases shall be to the criminal district court, under such regulations as may be prescribed by law, and in all such cases an appeal shall lie from such district court to the Court of Criminal Appeals.

When the judge of the county court is disqualified in any case pending in the county court, the parties interested may, by consent, appoint a proper person to try said case, or upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law.

SEC. 17. The county court shall hold a term for civil business at least once in every two months, and shall dispose of probate business, either in term time or vacation, as may be provided by law, and said court shall hold a term for criminal business once in every month, as may be provided by law. Prosecutions may be commenced in said court by information filed by the county attorney, or by

affidavit, as may be provided by law. Grand juries impaneled in the district courts shall inquire into misdemeanors, and all indictments therefor returned into the district courts shall forthwith be certified to the county court, or other inferior courts having jurisdiction to try them, for trial; and if such indictment be quashed in the county, or other inferior court, the person charged shall not be discharged if there is probable cause of guilt, but may be held by such court or magistrate to answer an information or affidavit. A jury in the county court shall consist of six men; but no jury shall be impaneled to try a civil case unless demanded by one of the parties, who shall pay such jury fee therefore in advance, as may be prescribed by law, unless he makes affidavit that he is unable to pay the same.

SEC. 18. Each organized county in the State, now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. The present county courts shall make the first division. Subsequent divisions shall be made by the commissioners' court provided for by this Constitution. In each such precinct there shall be elected, at each biennial election, one justice of the peace and one constable, each of whom shall hold his office for two years, and until his successor shall be elected and qualified; *provided*, that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two justices of the peace. Each county shall, in like manner, be divided into four commissioners' precincts, in each of which there shall be elected by the qualified voters thereof one county commissioner, who shall hold his office for two years, and until his successor shall be elected and qualified. The county commissioners so chosen, with the county judge as presiding officer, shall compose the county commissioners' court, which shall exercise such power and jurisdiction over all county business as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed.

SEC. 19. Justices of the peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than \$200.00, and in civil matters of all cases where the amount in controversy is \$200.00 or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county courts; and such other jurisdiction, criminal and civil, as may be prescribed by law; and appeals to the county courts shall be allowed in all cases decided in justices' courts where the judgment is for more than \$20.00, exclusive of costs, and in all criminal cases, under such regulations as may be prescribed by law. And the justices of the peace shall be *ex officio* notaries public; and they shall hold their courts at such times and places as may be provided by law.

SEC. 20. There shall be elected for each county, by the qualified voters, a county clerk, who shall hold his office for two years, who

shall be clerk of the county and commissioners' courts and recorder of the county, whose duties, perquisites, and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the commissioners' court until the next general election for county and State officers; *provided*, that in counties having a population of less than 8,000 persons there may be an election of a single clerk, who shall perform the duties of district and county clerks.

SEC. 21. A county attorney, for counties in which there is not a resident criminal district attorney, shall be elected by the qualified voters of each county, who shall be commissioned by the Governor and hold his office for the term of two years. In case of vacancy the commissioners' court of the county shall have power to appoint a county attorney until the next general election. The county attorney shall represent the State in all cases in the district and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a district attorney, the respective duties of district attorneys and county attorneys shall, in such counties, be regulated by the Legislature. The Legislature may provide for the election of district attorneys in such districts as may be deemed necessary, and make provision for the compensation of district attorneys and county attorneys; *provided*, district attorneys shall receive an annual salary of \$500.00, to be paid by the State, and such fees, commissions and perquisites as may be provided by law. County attorneys shall receive as compensation only such fees, commissions and perquisites as may be prescribed by law.

SEC. 22. The Legislature shall have power, by local or general law, to increase, diminish or change the civil and criminal jurisdiction of county courts; and in cases of any such change of jurisdiction the Legislature shall also conform the jurisdiction of the other courts to such change.

SEC. 23. There shall be elected by the qualified voters of each county a sheriff, who shall hold his office for the term of two years, whose duties and perquisites, and fees of office shall be prescribed by the Legislature, and vacancies in whose office shall be filled by the commissioners' court until the next general election for county or State officers.

SEC. 24. County judges, county attorneys, clerks of the district and county courts, justices of the peace, constables and other county officers, may be removed by the judges of the district courts for incompetency, official misconduct, habitual drunkenness or other causes defined by law, upon the cause therefor being set forth in writing, and the finding of its truth by a jury.

SEC. 28. Vacancies in the office of judges of the Supreme Court, the Court of Criminal Appeals, the Courts of Civil Appeals and district courts shall be filled by the Governor until the next succeeding

general election, and vacancies in the office of county judges and justices of the peace shall be filled by the commissioners' court until the next general election for such offices.

SEC. 29. The county court shall hold at least four terms for both civil and criminal business annually, as may be provided by the Legislature, or by the commissioners' court of the county under authority of law, and such other terms each year as may be fixed by the commissioners' court; *provided*, the commissioners' court of any county having fixed the times and number of terms of the county court shall not change the same again until the expiration of one year. Said court shall dispose of probate business either in term time or vacation, under such regulations as may be prescribed by law. Prosecutions may be commenced in said courts in such manner as is or may be provided by law, and a jury therein shall consist of six men. Until otherwise provided, the terms of the county court shall be held on the first Mondays in February, May, August, and November, and may remain in session three weeks.

ARTICLE VI

SECTION 1. The following classes of persons shall not be allowed to vote in this State, to wit:

First—Persons under 21 years of age.

Second—Idiots and lunatics.

Third—All paupers supported by any county.

Fourth—All persons convicted of any felony; subject to such exceptions as the Legislature may make.

Fifth—All soldiers, marines and seamen employed in the service of the army of the United States.

SEC. 2. Every person subject to none of the foregoing disqualifications, who shall have attained the age of 21 years and who shall have resided in this State for one year next preceding an election and the last six months within the district or county in which such person offers to vote, shall be deemed a qualified elector; *provided*, that electors living in any unorganized county may vote at any election precinct in the county to which such county is attached for judicial purposes; and, *provided further*, that any voter who is subject to pay a poll tax under the laws of the State of Texas shall have paid said tax before offering to vote at any election in this State and hold a receipt showing that said poll tax was paid before the first day of February next preceding such election. Or, if said voter shall have lost or misplaced said tax receipt, he or she, as the case may be, shall be entitled to vote upon making affidavit before any officer authorized to administer oaths that such tax receipt has been lost. Such affidavit shall be made in writing and left with the judge of

the election. The husband may pay the poll tax of his wife and receive the receipt therefor. In like manner the wife may pay the poll tax of her husband and receive the receipt therefor. The Legislature may authorize absentee voting. And this provision of the Constitution shall be self-enacting without the necessity of further legislation.

ARTICLE VII

SEC. 3. One-fourth of the revenue derived from the State occupation taxes and a poll tax of one (\$1.00) dollar on every male inhabitant of this State, between the ages of 21 and 60 years, shall be set apart annually for the benefit of the public free schools; and, in addition thereto, shall be levied and collected an ad valorem State tax of such an amount not to exceed 35 cents on the one hundred (\$100.00) valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year, and it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free textbooks for the use of children attending the public free schools of this State; *provided, however*, that shall the limit of taxation herein named be insufficient, the deficit may be met by appropriation from the general funds of the State, and the Legislature may also provide for the formation of school districts by general or special law without the local notice required in other cases of special legislation; and all such school districts, whether created by general or special law, may embrace parts of two or more counties. And the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts, and for the management and control of the public school or schools of such district, whether such districts are composed of territory wholly within a county or in parts of two or more counties. And the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and the erection and equipment of school buildings therein; *provided*, that a majority of the qualified taxpaying voters of the district voting at an election to be held for that purpose, shall vote such tax, not to exceed in any one year \$1.00 on the \$100.00 valuation of the property subject to taxation in such district, but the limitation herein authorized shall not apply to incorporated cities and towns constituting separate and independent school districts, nor to independent or common school districts created by general or special law.

SEC. 4. The lands herein set apart to the public free school fund shall be sold under such regulations, at such times, and on such terms as may be prescribed by law; and the Legislature shall not have power to grant any relief to purchasers thereof. The Comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the Board of Education herein provided for, in the bonds of the United States, the State of Texas, or counties of such State, or in such other securities and under such restrictions as may be prescribed by law; and the State shall be responsible for all investments.

SEC. 5. The principal of all bonds and other funds, the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund; and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund, to which the Legislature may add not exceeding 1 per cent annually of the total value of the permanent school fund; such value to be ascertained by the Board of Education until otherwise provided by law; and the available school fund shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same or any part thereof ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law.

SEC. 6. All lands heretofore or hereafter granted to the several counties of this State for educational purposes are of right the property of said counties respectively to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the commissioners' court of the county. Actual settlers residing on said land shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed 160 acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon and other revenue, except the principal, shall be available fund.

SEC. 7. Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both.

SEC. 8. The Governor, Comptroller, and Secretary of State shall constitute a board of education, who shall distribute said funds to the several counties and perform such other duties concerning public schools as may be prescribed by law.

ARTICLE VIII

SECTION 1. Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The Legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations, other than municipal except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; *provided*, that \$250.00 worth of household and kitchen furniture belonging to each family in this State shall be exempt from taxation; *and provided further*, that the occupation tax levied by any county, city or town, for any years, on persons or corporations pursuing any profession or business, shall not exceed one-half of the tax levied by the State for the same period on such profession or business.

SEC. 8. All property of railroad companies shall be assessed, and the taxes collected in the several counties in which said property is situated, including so much of the roadbed and fixtures as shall be in each county. The rolling stock may be assessed in gross in the county where the principal office of the company is located, and the county tax paid upon it shall be apportioned by the Comptroller, in proportion to the distance such road may run through any such county, among the several counties through which the road passes, as part of their tax assets.

SEC. 9. The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed 35 cents on the \$100.00 valuation; and no county, city, or town shall levy more than 25 cents for road and bridges, and not exceeding 15 cents to pay jurors, on the \$100.00 valuation, except for the payment of debts incurred prior to the adoption of the amendment of September 25, 1883, and for the erection of public buildings, streets, sewers, waterworks and other permanent improvements, not to exceed 25 cents on the \$100.00 valuation in any one year, and except as is in this Constitution otherwise provided; and the Legislature may also authorize an additional annual

ad valorem tax to be levied and collected for the further maintenance of the public roads; *provided*, that a majority of the qualified property taxpaying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed 15 cents on the \$100.00 valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws.

SEC. 10. The Legislature shall have no power to release the inhabitants of or property in any county, city or town, from the payment of taxes levied for State or county purposes, unless in case of great public calamity in any such county, city or town, when such release may be made by a vote of two-thirds of each house of the Legislature.

SEC. 11. All property, whether owned by persons or corporations, shall be assessed for taxation and the taxes paid in the county where situated, but the Legislature may by a two-thirds vote authorize the payment of taxes of non-residents of counties to be made at the office of the Comptroller of Public Accounts. And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer.

SEC. 12. All property subject to taxation in, and owned by residents of unorganized counties, shall be assessed and the taxes thereon paid in the counties to which such unorganized counties shall be attached for judicial purposes; and lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties shall be assessed and the taxes thereon collected at the office of the Comptroller of the State.

SEC. 14. There shall be elected by the qualified electors of each county, at the same time and under the same law regulating the election of State and county officers, an assessor of taxes, who shall hold his office for two years and until his successor is elected and qualified.

SEC. 16. The sheriff of each county, in addition to his other duties, shall be the collector of taxes therefor. But in counties having 10,000 inhabitants, to be determined by the last preceding census of the United States, a collector of taxes shall be elected, to hold office for two years and until his successor shall be elected and qualified.

SEC. 18. The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation (the county commissioners' court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties.

ARTICLE IX

SECTION 1. The Legislature shall have power to create counties for the convenience of the people, subject to the following provisions:

First—In the territory of the State exterior to all counties now existing, no new counties shall be created with a less area than 900 square miles, in a square form, unless prevented by pre-existing boundary lines. Should the State lines render this impracticable in border counties, the area may be less. The territory referred to may, at any time, in whole or in part, be divided into counties in advance of population, and attached for judicial and land surveying purposes, to the most convenient organized county or counties.

Second—Within the territory of any county or counties now existing, no new county shall be created with a less area than 700 square miles, nor shall any such county now existing be reduced to a less area than 700 square miles. No new counties shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may, in whole or in part, be taken. Counties of a less area than 900, but of 700 or more square miles, within counties now existing, may be created by a two-thirds vote of each house of the Legislature, taken by yeas and nays, and entered in the Journals. Any county now existing may be reduced to an area of not less than 700 square miles by a like two-thirds vote. When any part of a county is stricken off and attached to or created into another county, the part stricken off shall be holden for and obliged to pay its proportion of all the liabilities then existing of the county from which it was taken, in such manner as may be prescribed by law.

Third—No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change shall have been submitted, in such manner as may be provided by law, to a vote of the electors of both counties and shall have received a majority of those voting on the question in each.

SEC. 2. The Legislature shall pass laws regulating the manner of removing county seats, but no county seat situated within five miles of the geographical center of the county shall be removed except by a vote of two-thirds of all electors voting on the subject. A majority of such electors, however, voting at such election, may remove a county seat from a point more than five miles from the geographical center of the county to a point within five miles of such center, in either case the center to be determined by a certificate from the Commissioner of the General Land Office.

ARTICLE X

SEC. 7. No law shall be passed by the Legislature granting the right to construct and operate a street railroad within any city, town

or village, or upon any public highway without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad.

SEC. 9. No railroad hereafter constructed in this State shall pass within a distance of three miles of any county seat without passing through the same, and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; *provided*, such a town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

ARTICLE XI

SECTION 1. The several counties of this State are hereby recognized as legal subdivisions of the State.

SEC. 2. The construction of jails, courthouses, and bridges, and the establishment of county poorhouses and farms and the laying out, construction, and repairing of county roads shall be provided for by general laws.

SEC. 3. No county, city or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in any wise loan its credit; but this shall not be construed to in any way affect any obligation heretofore undertaken pursuant to law.

SEC. 6. Counties, cities and towns are authorized, in such mode as may now or may hereafter be provided by law, to levy, assess and collect the taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected separately from that levied, assessed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor, and such taxes may be paid in the coupons, bonds or other indebtedness for the payment of which such tax may have been levied.

SEC. 7. All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized, upon a vote of two-thirds of the taxpayers therein (to be ascertained as may be provided by law), to levy and collect such tax for construction of seawalls, breakwaters or sanitary purposes, as may be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least 2 per cent as a sinking fund; and the condemnation of the right of way for the erection of such work shall be provided for.

SEC. 8. The counties and cities on the gulf coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities, the Legislature is specially authorized to aid, by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of seawalls, or breakwaters, such aid to be proportioned to the extent and value of the works constructed or to be constructed in any locality.

SEC. 9. The property of counties, cities, and towns owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the public, shall be exempt from forced sale and from taxation; *provided*, nothing herein shall prevent the enforcement of the vendor's lien, the mechanic's, or builder's lien, or other liens now existing.

ARTICLE XVI

SECTION 1. Members of the Legislature and all officers, before they enter upon the duties of their offices, shall take the following oath or affirmation: "I,, do solemnly swear (or affirm), that I will faithfully and impartially discharge and perform all the duties incumbent upon me as....., according to the best of my skill and ability, agreeably to the Constitution and laws of the United States and of this State; and I do further solemnly swear (or affirm), that since the adoption of the Constitution of this State, I being a citizen of this State, have not fought a duel with deadly weapons, within this State or out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, or aided, advised or assisted any person thus offending. And I furthermore solemnly swear (or affirm), that I have not, directly or indirectly, paid, offered or promised to pay, contributed nor promised to contribute, any money or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected (or, if the office is one of appointment, to secure my appointment): So help me God."

SEC. 5. Every person shall be disqualified from holding any office of profit or trust in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SEC. 6. No appropriation for private or individual purposes shall be made. A regular statement, under oath, and an account of the receipts and expenditures of all public moneys, shall be published annually, in such manner as shall be prescribed by law.

SEC. 8. Each county in the State may provide, in such manner as may be prescribed by law, a manual labor poorhouse and farm, for taking care of, managing, employing, and supplying the wants of its indigent and poor inhabitants.

SEC. 14. All civil officers shall reside within the State, and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held.

SEC. 17. All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

SEC. 22. The Legislature shall have the power to pass such fence laws, applicable to any subdivision of the State or county, as may be needed to meet the wants of the people.

SEC. 24. The Legislature shall make provision for laying out and working public roads, for the building of bridges, and for utilizing fines, forfeitures, and convict labor to all these purposes.

SEC. 27. In all elections to fill vacancies of office in this State, it shall be to fill the unexpired term only.

SEC. 30. The duration of all offices not fixed by this Constitution shall never exceed two years. . . .

SEC. 40. No person shall hold or exercise, at the same time, more than one civil office of emolument, except that of justice of the peace, county commissioner, notary public, and postmaster, unless otherwise specially provided herein.

SEC. 41. Any person who shall, directly or indirectly, offer, give, or promise, any money or thing of value, testimonial, privilege, or personal advantage to any executive or judicial officer or member of the Legislature, to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law. And any member of the Legislature, or executive or judicial officer, who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation or person, any money, appointment, employment, testimonial, reward, thing of value or employment, or of personal advantage or promise thereof, for his vote or official influence, or for withholding the same, or with any understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit, demand, and receive any such money or other advantage, matter or thing aforesaid, for another, as the consideration of his vote or official influence, in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery within the meaning of the Constitution, and shall incur the disability provided for said offenses, with a forfeiture of the office they may hold, and such other additional punishment as is or shall be provided by law.

SEC. 43. No man or set of men shall ever be exempted, relieved or discharged from the performance of any public duty or service imposed by general law, by any special law. Exemptions from the performance of such public duty or service shall only be made by general law.

SEC. 44. The Legislature shall prescribe the duties, and provide for the election, by the qualified voters of each county in this State, of a county treasurer and a county surveyor, who shall have an office at the county seat, and hold their office for two years and until their successors are qualified; and shall have such compensation as may be provided by law.

SEC. 59. (a) The conservation and development of all the natural resources of this State, including the control, storing, preservation, and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power, and all other useful purposes, the reclamation and irrigation of its arid, semi-arid, and other lands needing irrigation, the reclamation and drainage of its overflowed lands and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws, as may be appropriate thereto.

(b) There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the Constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

(c) The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts to be issued under such regulations as may be prescribed by law, and shall, also, authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; *provided*, the Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property taxpaying voters of such district and the proposition adopted.

APPENDIX II

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